

PRECAST CONCRETE AUST PTY LTD

TRADING TERMS AND CONDITIONS - UPDATED OCTOBER 2021

1 DEFINITIONS

- 1.1 "Contract" means the terms and conditions herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract
- 1.2 "PCA" means Precast Concrete Aust Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Precast Concrete Aust Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting PCA to provide the Works as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) If there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) If the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) If the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) Includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by PCA to the Customer at the Customer's request from time to time
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, date of birth and other contact information (where applicable), previous credit applications, credit history and pricing details
- 1.6 "Price" means the price payable (plus any GST where applicable) for the Works as agreed between PCA and the Customer in accordance with clause 5 below.

- 1.7 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” Cth.

2 ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 In the event that the supply of Works request exceeds the Customers credit limit and/or the account exceeds the payment terms, PCA reserves the right to refuse delivery
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW) or Section 14 of the Electronic Transactions (Queensland) Act 2001 (whichever is applicable), or any other applicable provision of that Act or any Regulations referred to in that Act.

3 Errors and Omissions

- 3.1 The Customer acknowledges and accepts that PCA shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) Resulting from an inadvertent mistake made by PCA in the formation and/or administration of this Contract; and/or
 - (b) Contained in/omitted from any literature (hard copy and/or electronic) supplied by PCA in respect of the Works.

- 3.2 In the event that such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of PCA; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4 Change in Control

- 4.1 The Customer shall give PCA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone, fax number(s) or e-mail address, changes of trustees or business practice). The Customer shall be liable for any loss incurred by PCA as a result of the Customer's failure to comply with this clause.

5 Price and Payment

- 5.1 At PCA's sole discretion the Price shall be either:
- (a) As indicated on invoices provided by PCA to the Customer in respect of Works performed or Materials supplied; or
 - (b) PCA's quoted Price (subject to clause 5.2) which shall be binding upon PCA provided that the Customer shall accept PCA's quotation in writing within thirty (30) days
- 5.2 PCA reserves the right to change the Price:
- (a) If a variation to the Materials which are to be supplied is requested; or
 - (b) If a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) In the event of increases to PCA in the cost of labour or Materials which are beyond PCA's control.
- 5.3 Variations will be charged for on the basis of PCA's quotation, and will be detailed in writing, and shown as variations on PCA's invoice. The Customer shall be required to respond to any variation submitted by PCA within ten (10) working days. Failure to do so will entitle PCA to

add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

- 5.4 At PCA's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by PCA which may be:
- (a) On or before delivery of the Works; or
 - (b) By way of progress payments in accordance with PCA's specified progress payment schedule. Such progress payment claims may include the reasonable value or authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) Thirty (30) days following the end of the month in which a statement is e-mailed to the Customer's email address or address for notices;
 - (d) Fourteen (14) days following the date specified on any invoice or other form as being the date for payment; or
 - (e) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by PCA
- 5.6 Payment may be made by cash, cheque, bank-cheque, electronic / online banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and PCA.
- 5.7 PCA may in its discretion allocate any payment received from the Customer towards any invoice that PCA determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer, PCA may re-allocate any payments previously received and allocated. In the absence of any payment allocation by PCA, payment will be deemed to be allocated in such manner as preserves the maximum value of PCA's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by PCA nor to withhold payment of any invoice because part of that invoice is in dispute.

- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to PCA an amount equal to any GST PCA must pay for any supply by PCA under this or any other Contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6 Delivery of the Works

- 6.1 Subject to clause 6.2 it is PCA's responsibility to ensure that the Works start as soon as it is reasonably possible
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that PCA claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond PCA's control.
- 6.3 At PCA's sole discretion, the cost of delivery is in addition to the Price.
- 6.4 PCA may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by PCA for delivery of the Works is an estimate only and PCA will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that PCA is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then PCA shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7 RISK

- 7.1 If PCA retains ownership of the Materials under clause 11 then:

- (a) Where PCA is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either; the Customer or the Customer's nominated carrier takes possession of the Materials at PCA's address or the Materials are delivered by PCA or PCA's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address)
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests PCA to leave Materials outside PCA's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that the Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3 The Customer acknowledges that variations of colour and texture are inherent in concrete. PCA shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product
- 7.4 Detailed drawings of any services that will be embedded in the concrete are to be provided to PCA prior to commencement of any Works. Whilst all due care will be taken, no liability will be accepted by PCA for damage to the services or any element embedded in the concrete.
- 7.5 Any advice, recommendation, information, assistance, or service provided by PCA in relation to Materials or Works supplied is given in good faith, is based on PCA's own knowledge and experience and shall be accepted without liability on the part of PCA and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.

8 Accuracy of the Customer's Plans and Measurements

- 8.1 PCA shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, PCA accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information
- 8.2 In the event the Customer gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Customer's responsibility to verify the accuracy of the measurements and quantities before the Customer or PCA places an order based on these measurements and quantities. PCA accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause

9 COMPLIANCE WITH LAWS

- 9.1 The Customer and PCA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 9.3 The Customer agrees that the site will comply with any workplace health and safety (WHS) laws relative to building/construction sites and any other relevant safety standards or legislation.

10 TITLE

- 10.1 PCA and the Customer agree that ownership of the Materials shall not pass until:
- (a) The Customer has paid PCA all amounts owing to PCA; and
 - (b) The Customer has met all of its other obligations to PCA
- 10.2 Receipt by PCA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised.
- 10.3 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 12.1:
- (a) The Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to PCA on request
 - (b) The Customer holds the benefit of the Customer's insurance of the Materials on trust for PCA and must pay to PCA the proceeds of any insurance in the event of the Materials being lost, damaged, stolen or destroyed.
 - (c) The production of these terms and conditions by PCA shall be sufficient evidence of PCA's rights to receive the insurance proceeds direct from the insurer without the need of any person dealing with PCA to make further enquiries.
 - (d) The Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for PCA and must pay or deliver the proceeds to PCA on demand.
 - (e) The Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of PCA and must sell, dispose of or return the resulting product to PCA as it so directs.
 - (f) Unless the Materials have become fixtures the Customer irrevocably authorises PCA to enter any premises where PCA believes the Materials are kept and recover possession of the Materials.

- (g) PCA may recover possession of any Materials in transit whether or not delivery has occurred
- (h) The Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of PCA.
- (i) PCA may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

11 SECURITY AND CHARGE

- 11.1 In consideration of PCA agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money)
- 11.2 The Customer indemnifies PCA from and against all PCA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PCA's rights under this clause
- 11.3 The Customer irrevocably appoints PCA and each director of PCA as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any documents on the Customer's behalf.

12 DEFECTS, WARRANTIES AND RETURNS. COMPETITION AND CONSUMER ACT 2010(CCA)

- 12.1 The Customer must inspect all Materials prior to delivery or pick-up and must within forty-eight (48) hours of delivery notify PCA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such

defect becomes evident. Upon such notification the Customer must allow PCA to inspect the Materials or to review the Works provided.

- 12.2 PCA is not liable for any damage incurred after the Materials or Works have left the premises including but not limited to any damage that occurs:
- (a) during transport
 - (b) during process of unloading the Materials at the destination
 - (c) as a result of placement of the materials into its final position at the destination or worksite.
- 12.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees)
- 12.4 PCA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees
- 12.5 Except as expressly set out in these terms and conditions or in respect of the Non-excluded Guarantees, PCA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. PCA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.6 If the Customer is a consumer within the meaning of the CCA, PCA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.7 If PCA is required to replace any Materials under this clause or the CCA, but is unable to do so, PCA may refund any money the Customer has paid for the Materials.
- 12.8 If PCA is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then PCA may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 12.9 If the Customer is not a consumer within the meaning of the CCA, PCA's liability for any defect or damage in the Materials is:

- (a) Limited to the value of any express warranty or warranty card provided to the Customer by PCA at PCA's sole discretion;
- (b) Limited to any warranty to which PCA is entitled, if PCA did not manufacture the Materials;
- (c) Otherwise negated absolutely.

12.10 Subject to this clause 13, returns or replacements will only be accepted provided that:

- (a) The Customer has complied with the provisions of clause 13.1; and
- (b) PCA has agreed the Materials are defective; and
- (c) The Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) The Materials are returned in as close a condition to that in which they were delivered as is possible

12.11 Subject to Clause 14, in the event that a return or replacement is required, PCA's liability will be limited to the cost of replacement of PCA's portion of the supplied Works only and will not include under any circumstances:

- (a) cost of replacement of any hardware provided by the Customer or Others; or
- (b) cost of freight, delivery or associated transport costs or fees;
- (c) loss of profits (whether considered a direct or indirect loss);
- (d) loss of anticipated savings;
- (e) loss of business opportunity;
- (f) loss of goodwill or damage to reputation; or
- (g) loss as a result of a delay

12.12 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, PCA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) The Customer failing to properly maintain or store any Materials;
- (b) The Customer using the Materials for any purpose other than for which they were designed;

- (c) The Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) Interference with the Works by the Customer or any third party without PCA's prior approval;
- (e) The Customer failing to follow any instructions or guidelines provided by PCA;
- (f) Fair wear and tear, any accident or act of God.

12.13 Notwithstanding anything contained in this clause if PCA is required by a law to accept a return then PCA will only accept a return on the conditions imposed by that law.

13 MATERIALS SUPPLIED BY THIRD PARTIES

- 13.1 In the instance where fittings, Materials or equipment are supplied to PCA by the Customer or Others and subsequently used in conjunction with PCA Materials, all care but no responsibility is taken for the handling of the fittings and equipment provided by others.
- 13.2 It is the responsibility of the Customer to ensure that the fittings, Materials or equipment supplied to PCA is fit for purpose and is delivered to PCA in fair and useable condition.
- 13.3 PCA will limit responsibility and liability only to equipment and Materials supplied by PCA and not to any equipment, Materials or fittings supplied by others.

14 INTELLECTUAL PROPERTY

- 14.1 Where PCA has designed, drawn, written plans or a schedule of Works or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in PCA, and shall only be used by the Customer at PCA's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of PCA.
- 14.2 The Customer warrants that all designs, specifications or instructions given to PCA will not cause PCA to infringe any patent, registered design or trademark in the execution of the Customer's order and that the Customer agrees to indemnify PCA against any action taken by a third party against PCA in respect of any such infringement.

14.3 The Customer agrees that PCA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which PCA has created for the Customer.

15 DEFAULT AND CONSEQUENCES OF DEFAULT

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment at a rate of two and a half percent (2.5%) per calendar month (and at PCA's sole discretion such interest shall compound monthly at such a rate) after as well before any judgement.
- 15.2 If the Customer owes PCA any money the Customer shall indemnify PCA from and against all costs and disbursements incurred by PCA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PCA's contract default fee, and bank dishonour fees)
- 15.3 Further to any other rights or remedies PCA may have under this Contract, if a Customer has made payment to PCA, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PCA under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 15.4 Without prejudice to PCA's other remedies at law PCA shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PCA shall, whether or not due for payment, become immediately payable if:
- (a) Any money payable to PCA becomes overdue, or in PCA's opinion the Customer will be unable to make a payment when it falls due;
 - (b) The Customer has exceeded any applicable credit limit provided by PCA;
 - (c) The Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

- (d) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16 CANCELLATION

- 16.1 Without prejudice to any other remedies PCA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions PCA may suspend or terminate the supply of Works to the Customer. PCA will not be liable to the Customer for any loss or damage the Customer suffers because PCA has exercised its rights under this clause.
- 16.2 PCA may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice PCA shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to PCA for Works already performed. PCA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels the delivery of the Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PCA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders of products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced or an order has been placed.

17 PRIVACY POLICY

- 17.1 All emails, documents, images or other recorded information held or used by PCA is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. PCA acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III C of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic

Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). PCA acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

17.2 Notwithstanding clause 18.1, privacy limitations will extend to PCA in respect of Cookies where transactions for purchases/orders transpire directly from PCA's website. PCA agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP Address, browser, email client type and other similar details;
- (b) Tracking website usage and traffic; and
- (c) Reports are available to PCA when PCA sends an email to the Customer, so PCA may collect and review that that information ("collectively Personal Information"). In order to enable/disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable/disable the Cookies by selecting the option to enable/disable, provided on the website prior to proceeding with a purchase/order via PCA's website.

17.3 The Customer shall have the right to request (by e-mail) from PCA;

- (a) A copy of the Personal Information about the Customer retained by PCA and the right to request that PCA correct any incorrect Personal Information; and
- (b) That PCA does not disclose any Personal Information about the Customer for the purpose of direct marketing.

17.4 PCA will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

17.5 The Customer can make a privacy complaint by contacting PCA via e-mail. PCA will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a

decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <https://www.oaic.gov.au>

18 SERVICES OF NOTICES

18.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) By handing the notice to the other party, in person;
- (b) By leaving it at the address of the other party as stated in this Contract;
- (c) By sending it by registered post to the address of the other party as stated in this contract;
- (d) If sent by email to the other party's last known email address.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.