

SECTION II: TRADING TERMS

You agree that if We agree to provide a credit account, these Trading Terms will apply to all orders for and purchases of Concrete, Materials and Services from Us.

1 DEFINITIONS

1.1 **Agreement** means the agreement formed between You and Us for the Order of Concrete, Materials and Services, and includes the Application, these Trading Terms, and the Guarantee and Charge.

Application means the credit account application entered into by You.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Concrete means 'normal-class concrete' or 'special-class concrete' as those terms are defined in AS 1379-2007 at clauses 1.3.8(c) and (d).

Consumer has the meaning given to that term in the Australian Consumer Law.

Due Date means the date that You must pay all monies owing to Us in connection with the Supply of all Concrete, Materials and Services as set out in clause 3.1 or 4.2, as applicable.

GST has the meaning given to it in the GST Act.

Materials mean raw materials, goods and other materials, including reinforcing mesh, structural steel, steel support beams and gables, and other concreting tools and products.

Order means the order placed by You with Us for the Supply of Concrete, Materials and Services.

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

PPSA Register means the Personal Property Securities Register established under section 147 of the PPSA.

Prescribed Terms means any terms, conditions and warranties which the law expressly provides may not in respect of these Trading Terms be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

Security Interest means a security interest as defined under the *Personal Property Securities Act 2009* (Cth).

Security of Payment Act means the legislation relating to security of payments in the building and construction industry, including the *Building and Construction Industry (Security of Payment) Act 2009* (ACT) and *Building and Construction Industry Security of Payment Act 1999* (NSW), as applicable.

Services means the provision of Concrete testing, administration, and other services related to the Supply of Concrete and Materials.

Site means the location where the Services are to be Supplied to You.

Supply means the delivery of Concrete and Materials to a Site or the provision of Services at a Site, and **Supplied** has a corresponding meaning.

Us, We, Our means Elvin Group Pty Ltd ACN 108 858 368, Fast Reo Pty Ltd ACN 117 442 869, Concretors Warehouse Canberra Pty Ltd ACN 067 944 932, as applicable, and includes its directors, agents, subcontractors and employees.

You, Your means the person/entity applying for credit with Us and includes its directors, agents, subcontractors and employees.

2 ORDERS

- 2.1 You may place an Order with Us (in writing or verbally) from time to time for the Supply of Concrete, Materials and other Services.
- 2.2 Unless otherwise agreed in writing, You will pay for the Supply provided at the rates and on the conditions specified in Our pricing schedule applicable at the date of the Order.
- 2.3 You will be required to bear the cost for any freight or insurance costs levied on the Supply, which we will set out in the Order.
- 2.4 We may accept or decline any Order at Our discretion or require payment in advance for any Order.
- 2.5 We may alter any quote given by Us at any time prior to acceptance of an Order and any written quote expires if not accepted within 30 days, unless We agree otherwise.
- 2.6 You must give Us all relevant information (including specifications relating to the Concrete, Materials and Services required, details relating to the Site and any other information which may affect Our ability to Supply the Concrete, Materials and Services).
- 2.7 If We are unable to locate or purchase Materials that have been ordered by You, We are permitted under this Agreement to replace the ordered Materials with similar or equivalent Materials.
- 2.8 If You cancel an Order before We Supply the Concrete, Materials or Services without Our agreement, We reserve the right to recover all costs and expenses incurred by Us in complying with the Order.
- 2.9 You will pay for the Supply at the rates set out in the Order. We reserve the right to increase or alter the rates in the Order without notice, prior to the date of Supply for any reason, including but not limited to, if there is a significant change in Our costs of Supply or a change in the Site at which the Concrete, Materials or Services are to be Supplied or there is a significant change in the quantities.

3 INVOICES

3.1 We can issue an invoice for payment at any time on and from each Supply. For the purposes of the Security of Payment Act, each Supply made pursuant to an Order shall create a new reference date in relation to that Order.

4 PAYMENT

4.1 Subject to clause 4.2, You must pay for the Supply in immediately available funds on or prior to delivery of the Concrete, Materials and Services unless otherwise agreed by Us in writing.

4.2 Where We have agreed to Supply the Concrete, Materials and Services on account, You must pay Us for all monies payable in connection with the Supply in full within 30 days from the last day of the calendar month in which the Concrete, Materials and Services are invoiced, unless otherwise agreed by Us.

4.3 You must pay all GST payable by Us in connection with the Supply and any other tax or charge. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

4.4 Where You make any payment by credit card or in any other method as a result of which We will incur a charge in connection with the payment, You must pay Us the amount of that charge as an additional payment.

4.5 Without affecting any other right or remedy which We may have, We may (at Our discretion) withhold delivery of any Concrete, Materials and Services and/or cancel any Order without notice if You fail to pay any amount due to Us within 7 days of the Due Date.

4.6 You will pay Us interest on all monies outstanding from the Due Date until payment at Our financial institution's current overdraft rate and will pay Us on demand any costs or expenses (including legal and debt collection fees) incurred by Us in recovering any overdue amounts.

4.7 We may apply any payment received from You against any amount owing to Us, at Our discretion. You may not claim any set off against Us and must pay all amounts owing without deduction.

5 SUPPLY AND SITE ACCESS

5.1 We will Supply and you will receive the Concrete, Materials and Services at the kerbside alignment nearest to the Site unless other arrangements have been agreed in writing.

5.2 If You require the delivery vehicle to leave a public road to gain access to the discharge or unloading location, You must:

- (a) ensure that the delivery vehicle has a safe, suitable and unrestricted route from the

kerbside to the discharge or unloading location; and

- (b) indemnify Us against any loss or damage arising from the delivery vehicle gaining such access unless the damage is solely caused by Our negligent act or omission.

5.3 You must, before the discharge or unloading of the Concrete, Materials and Services from the delivery vehicle, check that the description and quantity of the Concrete, Materials and Services Supplied on the delivery docket conforms with the requirements under Your Order. You must record any discrepancies, including discrepancies in quantity and specification, in writing on the delivery docket. Failure to make such notations on the delivery docket is deemed to be conclusive evidence that the delivery docket is accurate and the Concrete, Materials and Services will be deemed to have been Supplied in accordance with the Order and accepted by You.

5.4 You must ensure safe, timely and adequate access to the Site for the Supply of the Concrete, Materials and Services during normal working hours and You will pay Us any additional expenses or costs incurred if the Site is not accessible at the agreed time.

5.5 Without affecting any other right or remedy which We may have, We may (at Our discretion) withhold Supply of any Concrete, Materials and Services and/or cancel any Order without notice. We will refund any prepayments made by You for any cancelled Order within 7 days.

5.6 We will use Our reasonable endeavours to meet the delivery time/s and service dates specified on an Order but will not be responsible for any loss or damages incurred by You or any other person or entity as a result of early, late or non-supply of Concrete, Materials and Services.

5.7 We reserve the right to charge You for return cartage, handling and disposal costs for:

- (a) any Concrete, Materials and Services ordered by You and batched in accordance with Your Order, for which you refuse delivery;
- (b) any Concrete, Materials and Services ordered by You which are returned to Us due to being surplus to your requirements; and
- (c) any Concrete, Materials and Services being rejected because the time between batching and discharge is either greater than the time permitted by AS1379-2007 or any written specification for that Order, provided the delay was not caused by Our acts or omissions.

5.8 You will be liable to pay for the cost of any Concrete, Materials and Services returned or rejected in the

circumstances set out at clause 5.7 in accordance with the payment terms set out in these Trading Terms.

- 5.9 You will be liable to pay for the cost of any replacement Concrete, Materials and Services provided as a consequence of clause 5.7(c) in accordance with the payment terms set out in these Trading Terms.

6 EXTENT OF CONCRETE, MATERIALS AND SERVICES

- 6.1 We warrant that the Concrete will be Supplied in accordance with AS 1379-2007, unless otherwise stated in Your Order. This warranty is limited only to the condition of the Concrete as it is prepared on Our premises. We accept no responsibility for the performance of the Concrete other than with respect to the criteria specified in AS1379-2007 and tested in a NATA registered testing facility.

- 6.2 You acknowledge that You are responsible for the handling, placing, finishing, curing, care and maintenance of the Concrete after it has been discharged or unloaded from Our delivery vehicle.

- 6.3 If the Concrete is to be placed by pump, You must notify Us in advance. Whilst We will use reasonable endeavours to accommodate this request, We do not warrant that the Concrete will be able to be pumped due to the variation in pumps and to maintain Concrete specifications.

- 6.4 We accept no responsibility for the performance of the Concrete, Materials and Services caused by, contributed to, or arising from:

- (a) the addition of any water or any other material to the Concrete before or after discharge from the delivery vehicle unless there is prior written approval for the addition from Our authorised representative;
- (b) the performance of the Concrete where the Concrete is mixed to Your specifications or the prescribed concrete mix design that You stipulated;
- (c) the effect of any weather conditions or temperature including heat, cold, rain, wind or hail; or
- (d) Your (including any contractors You have engaged) act or omission (including construction or site practices).

7 DECORATIVE CONCRETE

- 7.1 We will use Our best endeavours to Supply You with the Concrete, Materials and Services (including decorative or coloured concrete) that are formulated to be capable of achieving the selected finish depicted in any brochures or other materials published by Us or our suppliers, that You have selected. You acknowledge that it is Your responsibility (including any contractors you

have engaged) to achieve the selected finish and We have no liability arising from the failure of the Concrete, Materials and Services from achieving the selected finish.

- 7.2 You acknowledge and agree that the aggregates, colour pigments and materials used in decorative or coloured concrete are subject to natural variations which cause colour variation to the finished product and acknowledge that the colours depicted in any brochures or other materials published by Us or our suppliers can only be indicative only of the finished colours that can be achieved by You (including any contractors you have engaged).

8 SAFETY

- 8.1 You acknowledge that freshly mixed cement, mortar, or concrete may cause skin irritations.

- 8.2 You must ensure that all personnel involved with the Concrete, Materials and Services wear appropriate protective clothing such as impervious clothing, gloves, safety goggles and particulate respirator.

- 8.3 You acknowledge that You have read the 'Material Safety Data Sheet' which is available at www.elvingroup.com.au. The 'Material Safety Data Sheet' contains general guidelines only and should not be treated as exhaustive.

9 RISK IN AND TITLE TO MATERIALS

- 9.1 Upon the delivery of the Materials (or such other time as the parties agree), risk in the Materials will pass to You.

- 9.2 Title to the Materials will remain with Us until We have been paid in full any monies owed by You to Us on any account.

- 9.3 Until title to the Materials passes to You, You will hold the Materials as bailee for Us and store them separately from other goods in a manner which clearly identifies them as goods belonging to Us.

- 9.4 We may repossess the Materials without notice if You are in default under these Trading Terms and You hereby consent to and authorise Us to enter into the Site or any other place where the Materials is located to do so. You will indemnify Us against any claim by any party as a result of Us exercising Our rights under this clause.

- 9.5 In the event that You sell the Materials Supplied by Us prior to paying Us all monies payable in connection with the Supply, You will hold the proceeds of the sale on trust for Us.

10 PERSONAL PROPERTY SECURITIES REGISTRATION

- 10.1 The Parties agree that these Trading Terms:

- (a) constitutes a security agreement for the purposes of the PPSA; and
 - (b) creates a Security Interest:
 - (i) in all Materials previously Supplied by Us to You, all Materials that will be Supplied under these Trading Terms and all proceeds of the goods (as defined in the PPSA) in relation to the Materials; and
 - (ii) in your personal property pursuant to clause 15 of these Trading Terms.
- 10.2 Until all monies due to Us in connection with the Supply of the Materials and the Services has been paid in full, We are entitled to register the Security Interests arising under these Trading Terms on the PPSA Register.
- 10.3 Other than effecting such registrations as we deem appropriate on the PPSA Register, We will not enforce Our rights under the PPSA in respect of our Security Interest unless You are in default of your obligations to Us or are otherwise deemed to be in default under these Trading Terms.
- 10.4 You waive Your right to receive notices from Us of:
- (a) a verification statement under section 157 of the PPSA;
 - (b) a statement of account under section 132 of the PPSA; and
 - (c) any proposal by Us to retain the Materials under section 135 of the PPSA.
- 10.5 For the purposes of sections 115(1) and 115(7) of the PPSA:
- (a) We need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) or 137(3) of the PPSA; and
 - (b) sections 142 and 143 of the PPSA are excluded.
- 10.6 If requested, You must provide to us any information that we deem necessary to enable us to register our Security Interest.
- 10.7 You hereby appoint and authorise Us as Your attorney to sign in Your name all documents which We reasonably consider necessary to enforce or protect Our rights and powers under these Trading Terms and under the PPSA.
- 10.8 The costs of registering a Financing Statement or Financing Change Statement on the PPSR may be charged by Us to You.
- 10.9 Unless otherwise defined, the terms and expressions used in this clause have the meanings given to them, or by virtue of the PPSA.

11 DEFAULT

- 11.1 You will be in default if:
- (a) You fail to pay any monies due to Us on any account by the Due Date.
 - (b) You breach any of these Trading Terms and, where that breach is capable of remedy, fail to remedy that breach within a reasonable period (being not less than 2 business days) after receiving notice from Us requiring You to do so.
 - (c) You become subject to any form of insolvency or bankruptcy administration and or, in Our reasonable opinion, are unable to pay Your debts as they fall due.
- 11.2 Without affecting any other right or remedy which We may have, We may (at Our discretion) withhold Supply of any Concrete, Materials and Services and/or cancel any Order without notice if You are in default at any time.
- ## 12 ACKNOWLEDGEMENT AND WARRANTIES AND LIABILITY
- 12.1 You warrant that You have satisfied Yourself as to the description and condition of the Concrete, Materials and Services Supplied and their fitness for the purpose to which they were ordered.
- 12.2 To the extent permitted by law, all guarantees, warranties and conditions other than those specified in the Agreement or that are Prescribed Terms, are hereby excluded.
- 12.3 If you are a Consumer, Our liability for any breach of contract, tort (including negligence) is limited to:
- (a) in the case of Materials, the replacement of the Materials, the Supply of equivalent Materials, the repair of the Materials or payment of the costs of repairing the Materials or obtaining equivalent Materials.
 - (b) In the case of Concrete and Services, the Supply of the Concrete and Services again or payment of the cost of having the Concrete and Services Supplied again.
- 12.4 If you are a Consumer, Our liability for the breach of any Prescribed Term, is limited to (at Our election) to:
- (a) in the case of a major failure (as defined in the Australian Consumer Law), Our liability is limited to the extent permitted by the Australian Consumer Law; or
 - (b) in any other case:
 - (i) in the case of Materials, the replacement of the Materials, the Supply of equivalent Materials, the repair of the Materials or payment

of the costs of repairing the Materials or obtaining equivalent Materials.

- (ii) In the case of Concrete and Services, the Supply of the Concrete and Services again or payment of the cost of having the Services Supplied again.

12.5 If You are not a Consumer, We will not be liable in any circumstance:

- (a) for any damage to property of any kind resulting from the Supply of the Concrete, Materials and Services under these Trading Terms;
- (b) any defects in the Concrete, Materials and Services unless notified to Us within 14 days of the date of Supply. The notice must specify the defect and will be a precondition to any right to recovery; and
- (c) any consequential loss (including loss of revenue, loss of profit, loss of anticipated savings or business, loss of data, loss of valuable equipment, loss of opportunity or expectation and loss of any special direct indirect punitive or exemplary damages however arising including as a result of negligence);

and Our total liability is limited (to the extent allowed by law) to the amount paid by You to Us for the Concrete, Materials and Services.

12.6 You indemnify Us against any loss or damages suffered by Us to the extent that the loss or damage is caused by any act or omission of You, Your employees or agents.

13 CLAIMS

13.1 You must inspect the Concrete, Materials and Services on the date of Supply and within 30 days of the date of Supply You must notify Us in writing of any claim in relation to any evident defect or damage, shortage in quantity, or failure to comply with the terms of the Order. You must notify Us in writing of any other alleged defect in the Concrete, Materials and Services as soon as reasonably possible after any such defect becomes evident.

13.2 Following receipt of Your notification pursuant to clause 13.1, You must, at our request, allow Us to inspect the Concrete, Materials and Services.

13.3 If You fail to comply with clause 13.1 within the specified timeframe, You are barred from making any claim with respect to any matter that was or should have been identified under clause 13.1.

14 WHERE YOU ARE A TRUSTEE OF A TRUST ("TRUST")

14.1 You warrant that:

- (a) You are acting in Your own right and as trustee of the Trust and are entitled to have access to and be indemnified from the Trust assets for all obligations and liability to Us under the Trading Terms.
- (b) There will be no change of trustee or change to the terms of the Trust or winding up of the Trust without Our prior agreement.

14.2 You acknowledge that a breach of these warranties will entitle Us to cease Supply of any further Concrete, Materials and Services including any already ordered, and to demand immediate payment of all monies payable by You on any account.

15 SECURITY AND CHARGE

15.1 As security for the payment of all monies payable to Us on any account You hereby (in Your personal capacity and as trustee if appropriate) charge in favour of Us all of Your interest (legal and beneficial) in all of your:

- (a) personal property (as defined in the PPSA); and
- (b) present and future real property.

15.2 You hereby consent to Us lodging a caveat on any real property owned by You and agree to sign a mortgage or any other document as requested by Us to perfect the security created or arising under these Trading Terms.

15.3 The charge over your personal property constitutes a Security Interest.

16 FORCE MAJEURE

16.1 We will not be liable for any failure to meet any obligations to the extent that such failure is caused by or arises from:

- (a) strikes, lockouts or other industrial disputes, shortage of labour or materials, delay in manufacturing by Us, Our associates or suppliers, civil commotion, fire, flood, drought, loss or delay at sea or otherwise, breakdown or war, or;
- (b) any other cause whether arising from natural causes, human agency or anything beyond the Our reasonable control,

and in such event We may (at Our discretion) elect to cancel that Order or extend the time for performance and You will not be relieved of any obligation to accept or pay for goods by reason of any such delay in Supply.

17 CERTIFICATE

17.1 A certificate of one of Our officers as to the amount for the time being due from You to Us and as to the interest

from time to time payable will be conclusive evidence for all purposes against the Guarantor in the absence of manifest error.

18 AUSTRALIAN CONSUMER LAW GUARANTEES

18.1 Where Prescribed Terms apply under the Australian Consumer Law, the following applies:

18.2 Our goods come with guarantees that cannot be excluded by the Australian Consumer Law. You are entitled to a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure.

19 GENERAL

19.1 The law of the Australian Capital Territory shall apply to these Trading Terms and You hereby submit to the jurisdiction of the Courts of that Territory.

19.2 This Agreement is not assignable or transferable by You without Our prior written consent. A change in control (as defined in the Corporations Act 2001) is deemed to be an assignment of this Agreement.