

Precast Civil Industries Pty  
Ltd ABN 78 615 726 924  
Rocla Pty Ltd ABN 31 000 032 191

# Group Directors Guarantee – Precast Civil Industries Pty Ltd

Trading as: Civilmart, Tellam Civil Products, BCP Precast, Toowoomba Tanks, CM Concrete, CPC, MC Pipes, Icon Septech, Australian Quality Precast, Highland Tanks, Naval Base Concrete and Rocla Pty Ltd trading as Civilmart Rocla.

## SECTION 1: Guarantee, Indemnity and Charge

This Guarantee & Indemnity is made this ..... Day of ..... Year.....

### BETWEEN

#### (1) (Names & Addresses of Guarantors)

.....  
.....  
.....

(the "Guarantor")  
And

**Precast Civil Industries Pty Ltd (ACN 615 726 924) and Rocla Pty Ltd (ACN 000 032 191)** (collectively Precast)

.....

### RECITALS

- A.** At the request of the Guarantor, Precast has agreed to provide credit and/or products and services from time to time to the Customer named in the schedule on terms which are contained in Precast's terms of trade agreement ("**Terms of Trade**") between the Precast and the Customer.
- B.** The Guarantor, in consideration of Precast entering into the Terms of Trade or continuing to supply products or services pursuant to the Terms of Trade, is agreeable to guaranteeing to Precast that the Customer will perform all of its obligations pursuant to the Terms of Trade including the punctual payment of any amounts due to Precast from time to time.

### THE PARTIES AGREE AND DECLARE AS FOLLOWS:

#### 1. GUARANTEE

##### 1.1 Guaranteed Moneys

In consideration of Precast agreeing, at the request of the Guarantor, to provide or continue to provide credit and/or goods and services from time to time to or for the Debtor, the Guarantor unconditionally and irrevocably guarantees to Precast the due and punctual payment of:

- (a) all moneys due and payable or from time to time become due and payable to Precast under or in connection with the provision of credit and/or goods and services;

- (b) all other moneys which the Debtor either alone or jointly with any other person now or from time to time is or becomes actually or contingently liable to pay to Precast under this Guarantee and any other agreement, security or negotiable or other Instrument or as a result of any matter or thing; and
- (c) to avoid doubt, any GST that may be due and payable or from time to time become due and payable by Precast under or in connection with the provision of credit and/or goods and services (the "Guaranteed Moneys").

## 1.2 Result or Non-Payment

If the Debtor defaults in the due and punctual payment of the Guaranteed Moneys or in any part of them the Guarantor must pay those moneys to or as directed by Precast.

## 1.3 Demand

Any demand to be made upon the Guarantor or the Debtor shall be deemed to be duly made if in writing and signed for or on behalf of Precast by any secretary, director, manager, attorney, credit manager, other duly authorized officer or solicitor of Precast from time to time.

## 1.4 Continuing Guarantee

This Guarantee is a continuing security for the whole other Guaranteed Moneys and all other money payable under this Guarantee notwithstanding any settlement of account, intervening payment or anything else, until the Guaranteed Moneys and all other moneys payable under this Guarantee have been paid in full.

## 2. GUARANTOR'S OBLIGATIONS

### 2.1 Principal Obligations

The Guarantor's obligations:

- (a) are principal obligations and not ancillary or collateral to any other obligation; and
- (b) may be enforced against the Guarantor without Precast being required to exhaust any remedy it may have against the Debtor or to enforce any security it may hold with respect to the Guaranteed Moneys.

### 2.2 Obligations Absolute and Unconditional

The liability of the Guarantor is absolute and unconditional and is not affected by anything which, but for this provision might operate to exonerate from any or its obligations including, without limitation, anyone or more of the following (whether occurring with or without the consent of any person):

- (a) the grant to the Debtor, the Guarantor or any other person at any time, waiver or other indulgence or concession or any whole or partial discharge or release of the Debtor, the Guarantor or any other person;
- (b) any transaction or arrangement that may take place between Precast and the Debtor, the Guarantor or any other person;
- (c) the bankruptcy, winding up, liquidation, becoming an insolvent under administration (in terms of the Corporation Law), the appointment of an administrator to or the death of, the Debtor, the Guarantor or any other person;
- (d) the fact that Precast or any other person takes or fails to take any other guarantee or security;
- (e) any increase in the credit limit set by Precast on the Debtor's account, including but not limited to where the Guarantor has not approved or been put on notice of that increase in credit limit;
- (f) the fact that Precast or any other person exercises or refrains from exercising any other guarantee or security or any of the rights, powers or remedies conferred on it by the law or by any agreement, or fails to recover, by exercise of any such rights, any moneys owing to Precast by the Debtor,
- (g) the variation (including a variation which increases the Guaranteed Moneys) replacement, extinguishment, loss, release, discharge, abandonment or transfer either in whole or in part of any agreement or document relating to the Guaranteed Moneys including any other guarantee or security now or in the future held by Precast from any person;
- (h) the obligations of the Debtor or the Guarantor or any other person under any agreement or document relating to the Guaranteed Moneys including any other guarantee or security, being or becoming wholly or partially illegal, void, voidable or unenforceable;
- (i) the failure by Precast to give notice the Guarantor of any default by the Debtor or any other person;

(j) any legal limitation, disability, incapacity or other circumstance related to the Debtor, the Guarantor or any other person;

(k) the fact that any person who was intended to be bound as Guarantor or surety in respect of the Guaranteed Moneys does not become bound or, having done so or any other guarantee, security, agreement or negotiable instrument;

(l) if the Debtor is a partnership any changes in membership of that partnership.

## 3. PREFERENCE

If, Precast applies any amount against any of the Guaranteed Moneys, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- (a) Precast's rights are to be reinstated and will be the same in respect of that amount, or in the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
- (b) the Guarantor shall immediately do anything (including the signing of the documents) required by Precast to restore to Precast any security or guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.

## 4. SUSPENSION OF GUARANTOR'S RIGHTS

### 4.1 Suspension of Rights

Until the Guaranteed Moneys and other moneys payable under this Guarantee have been irrevocably paid and discharged in full, the Guarantor may not:

- (a) share in any security or guarantee held or money received by Precast in respect of the Guaranteed Moneys or stand in the place of Precast in respect of any such security or guarantee or right to receive money;
- (b) take any steps to enforce a right or claim against the Debtor in respect of any money paid by the Guarantor to Precast under this Guarantee; or
- (c) have or exercise any rights as surety in competition with Precast.

### 4.2 Winding up or Bankruptcy of Debtor

If the Debtor is wound up or bankrupted, the Guarantor irrevocably authorises Precast (but without any obligation on the part of Precast) to:

- (a) prove for all moneys which the Guarantor has paid under the Guarantee; and
- (b) retain and carry to a suspense account and appropriate at Precast's discretion any dividends and other moneys received in respect of the Guaranteed Moneys, until the Guaranteed Moneys have been irrevocably paid and discharged in full.

## 5. INDEMNITY

### 5.1 Indemnity In respect of Guaranteed Moneys

For the consideration mentioned in clause 1.1, the Guarantor unconditionally indemnifies Precast against any loss which Precast may suffer because of any of the following:

- (a) the Guaranteed Moneys, in whole or in part, are not recoverable from the Debtor or having been recovered are repaid and restored;
- (b) the Debtor fails to carry out its obligations under any agreement it has entered into with Precast.

### 5.2 Payment under indemnity

The Guarantor shall pay to Precast a sum equal to any loss in respect of which it indemnifies Precast under this clause, including any of the Guaranteed Moneys (or any of the monies which, if recoverable, would have formed part of the Guaranteed Moneys) which are not or may not be recoverable.

## **6. INTEREST ON OVERDUE AMOUNTS**

- (a) The Guarantor shall pay interest on any of the Guaranteed Moneys which are due and payable by it and unpaid (including interest payable under this clause).
- (b) interest under clause 6(a) above will accrue from day to day from the due date for payment up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the same rate and in the same currency as interest is required to be paid on the relevant amount of the Guaranteed Moneys.

## **7. JOINT AND SEVERAL LIABILITY**

If two or more persons are the Guarantor:

- (a) references to the Guarantor are references to them separately and as well refer to any two or any more of them together;
- (b) the promises by them in this Guarantee bind all of them together as well as bind each of them separately;
- (c) the fact that one person is released from its promise does not mean that any other person is also released.

## **8. NO SECURITY TO GUARANTOR**

The Guarantor has not taken, and shall not take, security from the Debtor for or in consideration of the Guarantor assuming its obligations or any part of them under this Guarantee.

## **9. CHARGE AND MORTGAGE**

For the purpose of securing payment to Precast, the Guarantor hereby:

Charge

9.1 charges all of the Guarantor's right, title and interest in all present and after acquired real and personal property (including anything in respect of which the Guarantor has at any time a sufficient right, interest or power to grant a charge) in favour of Precast to secure the Guaranteed Moneys;

9.2 authorises and consents to Precast lodging a caveat or caveats or to registering a financing statement on the PPSR to note Precast's interests under this clause;

9.3 Irrevocably appoints Precast and any person nominated by Precast severally as the attorney of the Guarantor with power to execute, sign and deliver

(which delivery may be subject to such terms and conditions as the attorney thinks fit) any document to give effect to this Guarantee;

Mortgage

9.4 charges all of the Guarantor's right title and beneficial interest in all present and after acquired real property in favour of Precast to secure the Guaranteed Moneys;

9.5 agrees to deliver to Precast within seven (7) days of written demand by Precast a mortgage in registrable form incorporating the covenants contained for the jurisdiction relevant for the mortgage to be registered;

9.6 authorises and consents to Precast taking all actions necessary to give effect to this security including the lodgement of a caveat upon the title of the Guarantor's real property;

9.7 irrevocably appoints Precast and any person nominated by Precast severally as the attorney of Precast with power to execute, sign and deliver

(which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.

## **10. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)**

10.1 The Guarantor grants a security Interest in all the Guarantor's present and after-acquired property to Precast to secure payment of the Guaranteed Moneys.

10.2 Exclusion of PPSA provisions, to the extent the law permits;

- (a) for the purposes of section 115(1) and 115(7) of the PPSA;

- (l) Precast need not comply with sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4) or 135; and

- (II) sections 142 and 143 are excluded;

- (b) for the purposes of section 115(7) of the PPSA, Precast need not comply with sections 132 and 137;

- (c) if the PPSA is amended after the date of this document to permit the Guarantor and Precast to agree to not comply with or to exclude other provisions of the PPSA, Precast may notify the Guarantor that any of these provisions is excluded, or that Precast need not comply with any of these provisions, as notified to the Guarantor by Precast; and

- (d) the Guarantor and Precast must not disclose information of the kind specified in section 275(1) of the PPSA.

10.3 Exercise of rights by Precast. The Guarantor agrees that where Precast has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply. 10.4 No notice required unless mandatory. To the extent the law permits, the Guarantor waives its rights to receive any notice that is required by any provision

of the PPSA (including a notice of a verification statement).

10.5 Guarantor's liability not extinguished. Precast's rights and the Guarantor's liabilities under this agreement is not affected by any act, or failure to act, by Precast, or, by anything else that might otherwise affect Precast's rights or the Guarantor's liabilities under the laws relating to guarantees, including the fact that Precast does not:

- (a) register any security interest capable of being registered on the Personal Property Securities Register;
- (b) perfect any security interest in accordance with the requirements under the PPSA;
- (c) enforce any security interest; or
- (d) execute this document property or at all.

## **11. INDEMNITY FOR COSTS**

11.1 The Guarantor indemnifies Precast against, and shall pay Precast, the amount of all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and all fees or other duties, in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of the Guarantee;
- (b) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Guarantee; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under this Guarantee.

11.2 The Guarantor must pay or reimburse Precast (on a full indemnity basis), all costs and expenses of Precast in connection with:

- (a) appointing a Receiver or Receiver and Manager;
- (b) enforcing, exercising or protecting its security interest under this document;
- (c) maintaining, protecting or realising the Collateral; and
- (d) a default by the Guarantor.

## **12. NOTICES**

### **12.1 Method of Giving Notices**

A notice, consent, approval or other communication (each a "Notice") under this Guarantee shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered; or
- (b) sent by pre-paid mail; or to that person's address.

### **12.2 Time of Receipt**

A notice given to a person in accordance with this clause is treated as having been given and received on the day of actual delivery.

### 12.3 Address for Notices

For the purpose of this clause, a person (the "sender") may take the address of another person (the "recipient") to be:

- (a) the address given in this Guarantee; or
- (b) where the recipient notifies the sender of another address, the last address so notified to it.

### 13. LAW AND JURISDICTION

The law of the State or Territory in which this Guarantee is lodged shall apply to the terms of this Guarantee and any proceedings in respect of or any cause of action arising out of this Guarantee shall at the option of Precast be instituted, heard and determined in a court or competent jurisdiction in the Capital City of that State and such court shall be deemed to possess territorial jurisdiction to hear and determine such proceedings.

### 14. PRIVACY ACT 1988 (CTH) (PRIVACY ACT)

14.1 The Guarantor acknowledges and agrees that Precast may collect personal information and credit information about the Guarantor in accordance with Precast's privacy policy available on its website or on request from Precast.

14.2 The Guarantor acknowledges that the information provided is the basis for evaluation by Precast of the financial standing and creditworthiness of the Guarantor and:

- (a) certifies that the information provided is true and correct;
- (b) acknowledges that Precast has informed the Guarantor, in accordance with the Privacy Act, that certain items of personal information, including an opinion about the Guarantor are permitted to be kept or, a credit information file and might be disclosed to credit reporting bodies;
- (c) in accordance with the Privacy Act;
- (i) agrees to Precast obtaining from a business which provides information about the commercial creditworthiness or persons, information concerning the Guarantor's commercial activities or commercial creditworthiness and using each information for the purpose of assessing whether to accept the Guarantors;
- (ii) authorises Precast to exercise the Guarantor's rights to access the Guarantor's credit information file and credit reports;
- (d) agrees that Precast may give to and seek from any credit providers reports and information that has any bearing on the Guarantor's creditworthiness, credit standing, credit history or credit capacity for any or the following purposes to:
  - (i) assess an application by the Customer for credit or commercial credit;
  - (ii) notify other credit providers of a default by the Customer or the Guarantors;
  - (iii) exchange information with other credit providers as to the status of the Customer's account where the Customer is in default with Precast or other credit provider;
  - (iv) access the Customer's or Guarantor's creditworthiness or commercial creditworthiness at any time;
  - (v) assess whether to accept the Guarantors or to continue supplying credit to the Customer;
- (e) agrees that the Supplier may seek, from a credit reporting body, a credit report containing personal information about the Guarantor to assess whether to accept

the Guarantor for credit applied for, or provided to, the Customer.

(l) expressly consents to the use and disclosure of all personal information in relation to credit information that Precast may from time to time need to disclose to a credit reporting body; and

(g) agrees that these authorisations continue to have effect for the duration of the period during which credit or commercial credit is provided for or sought by the Customer from Precast or while any moneys are owed by the Guarantor or the Customer to the Supplier on any account under this or any other Guarantee or any terms and conditions for the sale of products or supply of services by Precast to the Customer as the case may be.

### 15. TRUSTEE PROVISIONS

15.1 If the Guarantor enters into this Guarantee as trustee of a trust it must first advise Precast in writing prior to executing this Guarantee and after advising Precast then the Guarantor:

- (a) is liable both personally and in its capacity as trustee;
- (b) gives Precast an assurance that:
  - (i) the Guarantor has power and authority as trustee of the trust to enter into this Guarantee and is doing so for a proper purpose;
  - (ii) the Guarantor is doing so, and is entitled to do so in a way that permits Precast to resort to the trust property in priority to the claims of the beneficiaries;
  - (iii) the Guarantor is entitled to be indemnified fully out of the property of the trust for its liabilities and obligations under this Guarantee in priority to the claims of the beneficiaries.

### 16. GENERAL

#### 16.1 Assignment

Precast may assign or transfer all or any part of its rights or obligations under this Guarantee without the consent of the Guarantor.

#### 16.2 Precast's Statement Conclusive

A statement, signed on behalf of Precast by any of its authorised representatives, as to any matter or of any amount (including, without limitation, amounts owing by the Guarantor) at the date specified in the statement is conclusive in the absence of manifest error.

#### 16.3 Execution

This Guarantee is binding on the Guarantor whether or not it is executed by Precast or any other person or body corporate named as Guarantor. Further, each party consents and agrees that this Guarantee may be executed and delivered by an online system using a web-based portal, or by way of email or other electronic means, and in each case it must be considered an original and each party is legally bound by it as if this Guarantee was delivered as an original document with original signatures.

#### 16.4 Attorneys

Each attorney who executes this Guarantee on behalf of a party declares that the attorney has no notice of the revocation or suspension by the granter or in any manner of the power of attorney under the authority of which the attorney executes this Guarantee.

**GUARANTEE AND INDEMNITY SCHEDULE**

**Customer:**.....

The GUARANTOR acknowledges that Precast has advised it to seek independent legal advice as to the effect of the provisions of the Guarantee, prior to execution of this Guarantee

**EXECUTED** by )  
(Guarantor) )  
 )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Name of Witness (printed)

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Address of Witness (printed)

**EXECUTED** for )  
(Guarantor) )  
 )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Guarantor

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Name of Witness (printed)

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Name of Guarantor

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Address of Witness (printed)