



TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES BY DGH DESIGN AND FABRICATION

The parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Except to the extent that the context otherwise requires, the following words have the following meaning when used in this Agreement.

“Agreement” means these terms and conditions and the ‘Quotation’ to which they are annexed.

“Business Days” means a weekday on which banks are open in Gladstone, Queensland, Australia.

“DGH” means DGH Design and Fabrication Services Pty Ltd (ACN 684 719 300) whose registered office is located at 18 Station Avenue, Darra, QLD 4076 and includes its successors or assigns.

“CA Group” means Cement Australia Pty Limited (ABN 75 104 053 474) and Cement Australia Holdings Pty Ltd (ABN 90 001 085 561) and any of their Related Bodies Corporate.

“Commencement Date” means the date of commencement of this Agreement as set out in the Quotation or where no date is specified, the date of execution of this Agreement.

“Delivery Location” means the location or locations as set out in the Quotation.

“Dispute” includes any disagreement or difference of point of view.

“Expiry Date” means the date of expiry of this Agreement as set out in Quotation or as otherwise agreed by the parties.

“Fees” means the fees payable by the Customer for the Goods and/or Services set out in the Quotation or purchase order.

“Goods” means the products (or any part of them) that DGH has agreed to supply, as set out in the Quotation or as otherwise expressly agreed by DGH, in accordance with the terms of this Agreement.

“GST” means the goods and services tax imposed by the GST Law.

GST Amount means any Fees (or relevant part of those Fees) multiplied by the appropriate rate of GST.

“GST Law” means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and its associated legislation.

“Intellectual Property Rights” means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields recognised in domestic law anywhere in the world.

“Laws” means all laws, codes and regulations (including of any Regulatory Authority) applicable to the obligations and/or activities of a party under this agreement.

“Labour Hire Services” means the provision of labour hire services by the Supplier under or in connection with the Agreement, including the recruitment, engagement, supply, allocation and rostering of persons to perform work for the Customer on a temporary, casual or fixed term basis.

“Personnel” means a party's employees, subcontractors, agents, personnel and/or other representatives

“Quotation” means the document headed ‘quotation’ or the pricing schedule attached to this Agreement.

“Regulatory Authority” means any governmental authority, agency or entity involved in granting regulatory approval of, or otherwise regulating any aspect of the obligations and/or activities of a party under this agreement.

“Services” means the services that DGH has agreed to supply, as set out in the Quotation or as otherwise expressly agreed, in accordance with the terms of this Agreement and includes Labour Hire Services (if applicable).

“Specifications” means any specifications, drawings, standards, tolerances, performance requirements, or other requirements for the Goods and/or Services stated in the Quotation or otherwise expressly agreed by DGH.

“Special Conditions” means any special conditions set out in the Quotation (if any).

“Term” means the period from the Commencement Date to the Expiry Date, or earlier termination date of this Agreement, subject to any extension agreed in writing between the parties.

1.2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules of



interpretation apply unless the context requires otherwise:

- (a) a reference to the Customer includes the employees, officers, contractors and agents of the Customer;
- (b) the singular includes the plural and conversely;
- (c) a gender includes all genders;
- (d) a reference to a person, a body corporate, a corporation, an unincorporated body, or any other entity is a reference to all of them;
- (e) a reference to a clause or schedule is to a clause of or schedule to this Agreement;
- (f) a reference to any party to this Agreement or any other party includes the party's successors and permitted assigns and where a party comprises two or more persons obligations of the party shall be joint and several;
- (g) a reference to any of the Schedules or Annexures hereto includes any amendments, variations, or modifications thereof;
- (h) mentioning anything after 'include, includes or including' does not limit what else might be included;
- (i) a reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing;
- (j) a reference to dollars (or \$ or A\$) in this Agreement, is a reference to Australian dollars;
- (k) a reference to any agreement or document is to that agreement or document as amended, notated, supplemented, varied, or replaced from time to time, except to the extent prohibited by this Agreement or that other agreement or document; and
- (l) a reference to any legislation or to any provision of any legislation includes any amendment, modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

2. SCOPE

- 2.1 These terms and conditions apply to all Goods and/or Services provided by DGH to the Customer.
- 2.2 These terms and conditions form part of and are deemed to be incorporated in any Quotation (and any purchase order issued pursuant to a Quotation) between DGH and the Customer and will apply despite any attempt by the Customer to impose additional or different terms. Any terms that the Customer attempts to impose or incorporate are null and void unless acknowledged expressly in writing by the DGH.
- 2.3 DGH will issue a revised Quotation to the Customer for any additional Goods and/or Services to be provided during the Term. If the Quotation is accepted by the Customer, the terms of this Agreement will apply to those additional Goods and/or Services and the revised Quotation will form part of this Agreement.

3. QUOTATIONS

- 3.1 Any Quotation provided by DGH shall remain open for acceptance for a period of 30 days from the date of the Quotation, after which the Quotation shall lapse and any other subsequent acceptance shall be subject to DGH's review and written approval.
- 3.2 Quotations do not cover any fees to public or local authorities, such as connection fees and/or bonds that may be applicable. These fees are payable in addition to any price contained in the Quotation. DGH may require the Customer to make any such relevant applications and to pay all relevant fees.

4. GOODS

- 4.1 DGH will supply, and the Customer will purchase for the Fee, any Goods set out in the Quotation on receipt of a valid purchase order.
- 4.2 DGH will use reasonable skill and care to ensure that the Goods conform with any Specifications.
- 4.3 Delivery of the Goods shall be as specified in the Quotation. The Customer acknowledges that unless otherwise agreed in the Quotation, DGH's only responsibility is to make the Goods available to the Customer for collection from DGH's site from the time specified in the Quotation and the Customer bears the full cost and risk involved in transporting the Goods to their specified destination.



- 4.4 If DGH is unable to deliver the Goods due to a cause attributable to the Customer, DGH may store the Goods at the Customer's risk and expense and the Customer must still pay for the Goods as if delivery occurred.
- 4.5 Risk in the Goods will pass on the collection of the Goods from DGH or, where DGH is responsible for delivery, on delivery of the Goods to the Delivery Point. Title in the Goods and in each instalment of them, shall remain with DGH and no legal or equitable interest whatsoever in the Goods or in any instalment of them shall pass to the Customer until the amount due in respect of the Goods or that instalment of the Goods (as the case may be) has been paid in full.
- 4.6 On collection or delivery of the Goods (as the case may be) the Customer must promptly inspect the Goods. The Goods are deemed accepted on the earlier of:
- (a) if collected, on collection by the Customer;
 - (b) the Customer using, installing or on-supplying the Goods;
 - (c) the Customer confirming acceptance in writing;
 - (d) within 3 Business days after delivery, unless the Customer has notified DGH of a defect or non-conformance.
- 4.7 If the Customer identifies that the Goods do not meet the Specifications, or the Goods are otherwise not in conformity with the Quotation, the Customer may require DGH to remedy the discrepancies or the non-conforming items. DGH may, at its sole discretion, repair, replace or re-supply the affects Goods and shall be liable for the related expenses (such as inspection charges, freight for returning the Goods) and for sending the replacement, storage and loading and unloading charges.

5. SERVICES

- 5.1 DGH will perform the Services:
- (a) using reasonable skill and care;
 - (b) in accordance with all applicable Laws; and
 - (c) in accordance with any specifications or requirements set out in the Quotation or this Agreement.
- 5.2 DGH must supply the Services to the Customer at the Delivery Location (if

applicable).

- 5.3 DGH will provide the Services to the Customer as an independent contractor and not as the Customer's employee, agent, partner or joint venturer. Neither party will have any right, power or authority to bind the other.
- 5.4 The Customer acknowledges and agrees that this is not an exclusive engagement and DGH may provide the same or similar services to any other party.

6. LABOUR HIRE

- 6.1 Where the Services include Labour Hire Services the following clause will apply.
- 6.2 DGH will be responsible for the following obligations with respect to any DGH employee placed on assignment with the Customer:
- (a) payment of remuneration;
 - (b) deduction of all appropriate taxation as required by the Australian Taxation Office;
 - (c) workers' compensation payments
 - (d) superannuation guarantee charges;
 - (e) payroll tax; and
 - (f) where applicable, management of long service leave entitlements under the *Long Services Leave Act 1976* or the *Construction Industry (Long Services) Act 1997*.
- 6.3 With respect to any DGH Personnel under the direction and control of the Customer (including any temporary staff), the Customer will:
- (a) be responsible for providing supervision, a safe workplace and system of work, and must comply with all applicable occupational health, safety and environmental legislation, regulation or code of practice;
 - (b) advise DGH prior to any change in the nature of the work begin undertaken by DGH's Personnel;
 - (c) advise DGH immediately of any injuries or incidents impacting or affecting DGH Personnel;
 - (d) cooperate and coordinate with DGH in good faith with respect to the return to work of any DGH Personnel who are injured while engaged in work on a



Customer site, including by providing light duties;

- (e) provide any site specific induction training required;
- (f) adequately supervise any DGH Personnel and provide them with a copy of all relevant policies, procedures and directions and
- (g) provide all equipment and machinery necessary to perform the work the subject of the Labour Hire Services.

6.4 The Customer must not during the Term of the Agreement entice or solicit any DGH Personnel to their employment or engage them as a casual.

7. CUSTOMER OBLIGATIONS

7.1 The Customer must comply with all applicable Laws, the terms of this Agreement and DGH's reasonable directions in connection with the supply of the Goods and/or Services.

7.2 On the DGH's requests, the Customer must promptly provide DGH with (as reasonably requested):

- (a) decisions;
- (b) relevant information; and
- (c) resources to ensure timely approval, development and sign-off of all Goods and/or Services.

7.3 The Customer acknowledges that DGH is entitled to rely on the accuracy of that information without independently verifying it, whether the information is provided by the Customer or its Personnel.

7.4 The Customer represents and warrants that all content provided to DGH in connection with the Goods and/or Services:

- (a) is accurate, complete and current;
- (b) does not infringe the Intellectual Property Rights or other rights of any person; and
- (c) is not unlawful, fraudulent or defamatory in itself or in respect of its intended use.

7.5 DGH will not be responsible for any deficiency or delays in the supply of the Goods and/or performance of the Services to the extent that it is attributable to Customer's acts or omissions.

7.6 If DGH accesses the Customer's premises (**Premises**) during the course of providing the

Goods and/or Services or fulfilling its obligations under this agreement, then this clause 6.6 will apply. The Customer will:

- (a) ensure that the Premises are safe and comply with all applicable work health and safety Laws;
- (b) provide DGH with all relevant safety information, risk assessments and induction materials prior to attendance;
- (c) promptly inform DGH of any hazards or incidents that may affect its Personnel; and
- (d) provide safe access to and from the Premises and safe facilities (including adequate amenities and first-aid equipment).

8. VARIATIONS

8.1 Any variation to the Goods and/or Services must be agreed in written between the parties and no additional Goods and/or Services be provided by DGH until such agreement is reached.

8.2 If the Customer requires any changes to the Goods and/or Services they must provide written notice to DGH outlining the changes requested to the scope of the Goods and/or Services.

8.3 Once a request is received, the parties agree to discuss and negotiate in good faith the feasibility and impact of such proposed changes, including without limitation revised deliverables and timeframes, variations to the Fees, and/or any other amendments to the Agreement that may be necessary to affect such change.

9. LIMITATIONS ON LIABILITY

9.1 To the maximum extent permitted by law, all other express and implied terms, liabilities, representations, conditions, warranties and guarantees imposed by legislation are hereby expressly negated and excluded.

9.2 Subject to all rights and remedies which are provided pursuant to legislation and which by law cannot be excluded by agreement between the parties, the liability of DGH is limited to:

- (a) the supplying of the defective or non-complying Goods and/or Services again; or



- (b) the payment of the cost of having the defective or non-complying Goods and/or Services again.

9.3 Notwithstanding any other clause of this Agreement, DGH shall not be liable to the Customer under the Agreement, in tort, in contract, in equity, by operation of statute or otherwise for any kind of indirect or consequential loss; loss of opportunity; loss of revenue; loss of profit or anticipated profit; loss of contracts, loss of goodwill; loss arising from business interruption; or liability arising out of or in connection with pollution or contamination, arising out of or in connection with this Agreement, or the work conducted under it, incurred or suffered by a party, or any other person.

9.4 Subject to clause 5.1, 5.2 and 5.3, the aggregate liability of DGH for any damages, losses and causes of action, whether in contract or tort (including negligence or otherwise) must not exceed the actual dollar amount paid by the Customer for the Goods and/or Services, which gave rise to such damages and/or losses and/or causes of action.

9.5 The parties agree that, to the extent permitted by law, the remedies of the Customer under this clause 8 are the only remedies available to the Customer and are to the exclusion of all other remedies under the Agreement, in tort, in contract, in equity, by operation of statute or otherwise.

10. INDEMNITY

10.1 The Customer indemnifies DGH against all Claims arising out of or in connection with:

- (a) any breach of this Agreement by the Customer;
- (b) the condition of the Customer's site or the Customer's failure to provide safe access or accurate information in relation to the customer's site;
- (c) the use, installation, commissioning or on-supply of the Goods or Services by the Customer or any third party (except to the extent caused by DGH's negligence or breach of this Agreement),

provided that DGH takes reasonable steps to mitigate loss the subject of this indemnity.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 DGH may use data, software, designs, utilities,

tools, templates, manufacturing aids, models, systems and other methodologies and know-how ("**Materials**") that it owns in producing the Goods and/or performing the Services. Notwithstanding the delivery of any Goods and/or Services, DGH retains all Intellectual Property rights in the Materials (including any improvements or knowledge developed while supplying the Goods and/or performing the Services), and ownership of its working papers prepared in connection with the Goods and/or Services (but not Customer information reflected in them).

11.2 Upon payment for the Goods and/or Services, the Customer may use any Materials included in the Goods and/or Services for the sole purpose of enjoying the benefit of the Goods and/or Services.

11.3 To the fullest extent permitted by applicable law, the Customer must indemnify DGH against all claims by third parties for breach of Intellectual Property Rights (including the Customer's Personnel) and any resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) incurred by DGH in relation to any documents, designs or materials provided to DGH by the Customer.

12. CONFIDENTIALITY

12.1 Except as otherwise permitted by this Agreement, neither party may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Either party may, however, disclose such information to the extent that it:

- (a) is or becomes public other than through a breach of this Agreement;
- (b) is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information;
- (c) was known to the recipient at the time of disclosure or is thereafter created independently;
- (d) is disclosed as necessary to enforce the recipient's rights under this Agreement; or
- (e) must be disclosed under applicable law,



legal process or professional regulations.

- 12.2 Either party may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.

13. FEES AND EXPENSES GENERALLY

- 13.1 The Customer must pay the Fees for the Goods and/or Services as detailed in the Quotation or as otherwise agreed by DGH.
- 13.2 Unless otherwise set forth in the Reference Schedule, payment is due within 30 days from the date of the invoice. If the Goods and/or Services fall within the scope of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), DGH may elect to utilise the security of payment provision set out in that Act for payment of the Fees.
- 13.3 DGH may charge interest on invoices which are not paid when due at the applicable Westpac Banking Corporation Reference Lending Rate from the due date to the date DGH receives payment. Accounts may be paid by electronic funds transfer, internet banking or any other such method accepted by DGH (in its absolute discretion)
- 13.4 DGH may charge additional fees if events beyond its control (including the Customer's acts or omissions) affect its ability to supply the Goods and/or perform the Services as originally planned or if the Customer asks DGH to supply additional Goods or perform additional tasks.
- 13.5 For the avoidance of any doubt, DGH's Fees do not include any disbursements or other statutory charges, including connection fees or bonds, payable in connection with the Goods and/or Services. Any disbursements or statutory charges payable must either be paid directly by the Customer or, if incurred by DGH, will be passed through and invoiced to the Customer for payment to DGH.

14. GST

- 14.1 If the whole or any part of any payment is the consideration for a Taxable Supply, the Customer must pay to DGH an additional amount equal to the GST Amount, concurrently with that payment.
- 14.2 A reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or

expense when incurred by the relevant party for which that party can claim an input tax credit under the GST Law.

15. FORCE MAJEURE

- 15.1 Notwithstanding any other provision of the Agreement, DGH shall not (to the extent permitted by law) be liable for any:

- (a) delays;
- (b) damage generated by delays; or
- (c) inability to perform any of its duties or obligations under the Agreement,

directly or indirectly resulting from or due to or as a consequence of acts of God, strikes or other labour disturbances or disputes, factory shutdowns, raw material shortages, prolonged failure of any energy or fuel supply, breakdowns, accidents or stoppages whether total or partial at ports, on railways or other means of transport, pandemics, epidemics, contamination by radioactivity, nuclear, chemical or biological contamination or any cause of delay whatsoever, whether or not of a kind previously specified in this Clause 14 or of a different kind reasonably beyond the control of DGH whether or not its occurrence could be foreseen at the date of this Agreement.

- 15.2 DGH must notify the Customer in writing of any such occurrence as soon as possible after the occurrence comes to its notice. DGH must notify the Customer in writing after the occurrence has ceased or been overcome, and must provide a statement of:

- (a) the reasons why these occurrences were beyond the reasonable control of DGH;
- (b) the effect of these occurrences on DGH's performance of its obligations under the Agreement; and
- (c) the period of delay and extension of time required as a result.

16. TERM AND TERMINATION

- 16.1 This Agreement applies to the Goods and/or Services whenever supplied or performed (including before the date of this Agreement).
- 16.2 This Agreement shall terminate on the completion of the Services and/or delivery of the Goods. Either party may terminate it, or any particular Goods and/or Services, earlier upon 30 days' prior written notice to the other. In addition, DGH may terminate this



Agreement, or any particular Goods and/or Services, immediately upon written notice to the Customer if DGH reasonably determine that it can no longer provide the Goods and/or Services in accordance with applicable Law.

16.3 The Customer must pay DGH for all work-in-progress, Goods and/or Services already performed or supply, any Goods already ordered or manufactured for the Customer and which cannot be cancelled, and any other expenses incurred by DGH up to and including the effective date of the termination of this Agreement.

16.4 Each party's respective confidentiality obligations under this Agreement shall continue for a period of three years following the termination of this Agreement. The other provisions of this Agreement that give party rights or obligations beyond its termination shall continue indefinitely following the termination of this Agreement.

17. GOVERNING LAW AND DISPUTE RESOLUTION

17.1 This Agreement shall be governed by the laws of the State of Queensland and the parties submit to this non-exclusive jurisdiction of the Courts of Queensland.

17.2 If a Dispute between the parties arises, either party may give the other party a notice of dispute. The parties must use their best endeavours to promptly resolve such Dispute within ten (10) business days.

17.3 If the Dispute is not entirely resolved within ten (10) business days, or such other period as the parties may agree, either party may commence legal proceedings in respect of the Dispute.

18. NOTICES

18.1 Any order, notice or other communication in connection with the Agreement is taken to have been duly given when made in writing and delivered or sent by post or e-mail to the party to which the notice or communication is intended to be given, at the respective current addresses of the parties or such other addresses as may from time to time be notified in writing by one party to the other for the purposes of this clause.

18.2 Any order, notice or other communication sent by post shall be taken to have been received at the expiration of two (2) business days after the date of posting.

18.3 Any order, notice or other communication sent by e-mail or other electronic form of transmission is taken to have been received upon completion of an apparently successful transmission. If an e-mail, or other electronic form of transmission is transmitted on a business day after 5.00 p.m. (at the place of receipt) or on a day which is not a business day, it shall be deemed to have been received on the next business day.

19. SPECIAL CONDITIONS

19.1 In addition to the terms and conditions of this Agreement, the parties have agreed the Special Conditions. To the extent of any inconsistency between the general terms of this Agreement and the Special Conditions, the Special Conditions prevail.

20. CA GROUP

20.1 DGH enters into this Agreement with the Customer on its own behalf and as agent for the CA Group in circumstances where the CA Group is expressly taken to have accepted the benefit of the terms of this Agreement given in favour of DGH by the Customer and DGH holds that benefit as trustee on behalf of the CA Group.

20.2 Any entity within the CA Group may at any time make themselves party to this Agreement for the purposes of enforcing the benefit of this Agreement by executing a copy of this Agreement and delivering it to the Customer. If this clause is invoked by any entity within the CA Group, that entity is deemed to have been a party to this Agreement on and from the date of this Agreement.

20.3 Notwithstanding anything else in this Agreement to the contrary, the Customer acknowledges that any loss or damage suffered by the CA Group arising out of performance of the Customer's obligation under this Agreement (or otherwise in connection with this Agreement) will be deemed to be a loss suffered by DGH and DGH will be entitled to:

- (a) prosecute any claim in respect of any such loss or damage without the need to join the CA Group to such action or proceeding;
- (b) recover any such loss or damage, or obtain any other available remedy in respect of such loss or damage on behalf of the CA Group; and



- (c) defend any claim made against the CA Group in connection with the Agreement on behalf of the CA Group without the need to join the CA Group to such action or proceeding.

21. MISCELLANEOUS

- 21.1 This Agreement constitutes the entire agreement between the parties as to the Goods and/or Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
- 21.2 Both parties may execute this Agreement as well as any modifications to it by electronic means and each party may sign a different copy of the same document. Both parties must agree in writing to modify this Agreement.
- 21.3 Each party represents that the person signing this Agreement on its behalf is expressly

authorised to execute them and to bind that party to their terms.

- 21.4 The Customer warrants that its Personnel, and any others for whom the Customer procures Goods and/or Services pursuant to this Agreement, shall be bound by and will ensure they comply with the terms of this Agreement.
- 21.5 Neither party may assign any of its rights, obligations or claims under this Agreement without the consent of the other party. DGH may subcontract any part of the Goods and/or Services in its absolute discretion and without the need for consent, provided that DGH remains responsible for performance of its obligations under this Agreement.
- 21.6 If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.