

# Formal Instrument of Agreement

Between: **[insert client name]**  
**[ABN XX XXX XXX XXX] of Honeysuckle Drive,**  
**NEWCASTLE NSW 2300 (“Purchaser”)**

And: **[insert precast supplier name]**  
**[ABN XX XXX XXX XXX] of Smith Street,**  
**SMITHFIELD NSW 2164 (“Supplier”)**

## RECITALS:

- A. At the request of the Purchaser, the Supplier has submitted a tender or quotation for the supply of various goods and/or equipment (“Supply”).
- B. The Purchaser has agreed to accept the tender or quotation from the Supplier for the Supply.
- C. The parties wish to formalise their agreement in accordance with the provisions of this Formal Instrument of Agreement.

## IT IS AGREED:

1. In this agreement, words and expressions shall, unless the context otherwise requires, have the same meanings as are respectively assigned to them in the General Conditions of Contract referred to below.
2. The following documents (“Contract Documents”) shall be deemed to form, and be read and construed as, part of the contract (“Contract”), namely;
  - (a) This Formal Instrument of Agreement
  - (b) Schedule 1 -Special Conditions
  - (c) Schedule 2 - AS 4911:2003 General Conditions of Contract
  - (d) Schedule 3 - Annexures to AS 4911:2003 General Conditions of Contract
  - (e) Schedule 4 - Scope of Works
  - (f) Schedule 5 - Specification
  - (g) Schedule 6 - Drawings
  - (h) Schedule 7 - Schedule of Rates
  - (i) Schedule 8 - Delivery Program

3. If there is any ambiguity or conflict between the various parts of the Contract Documents, then unless otherwise provided in this Agreement, the various provisions shall be interpreted in the following order of precedence with the document higher in the list taking precedence over the document lower in the list:

- (a) This Formal Instrument of Agreement
- (b) Schedule 1 -Special Conditions
- (c) Schedule 3 - Annexures to AS 4911:2003 General Conditions of Contract
- (d) Schedule 2 - AS 4911:2003 General Conditions of Contract
- (e) Schedule 6 - Drawings
- (f) Schedule 5 - Specification
- (g) Schedule 4 - Scope of Works
- (h) Schedule 7 - Schedule of Rates
- (i) Schedule 8 - Delivery Program

4. The Supplier shall supply Equipment in conformity with the Contract and will perform, fulfil, comply with, submit to and observe all and singular the things expressed or shown in the Contract on the part of the Supplier.

5. In full consideration of the performance by the Supplier of the Contract, the Purchaser will pay the Supplier the Contract Sum as may adjusted in accordance with the Contract.

6. The Contract Sum is:

..... ***[insert lump sum amount] excl GST***

***OR***

***to be calculated in accordance with the Schedule of Rates (Schedule 7 of the Contract).***

7. The Date for Delivery is:

***31 August 2008***

***OR***

***as shown in the delivery program (Schedule 8 of the Contract).***

8. No modification, variation or amendment of the Contract shall be valid unless there is a document evidencing such modification, variation or amendment executed by both parties.

9. This Contract shall take effect according to its tenor, notwithstanding any prior agreement in conflict or at variance with it or any correspondence or documents relating to the subject manner of the Contract prior to its execution.







- e) Additional security for *Equipment*. N/A  
not delivered  
(subclauses 3.4 and 24.2)
- f) *Supplier's security* upon acceptance is reduced by (subclause 3.4) N/A

† 13 *Purchaser's security*

- a) Form (clause 3) N/A
- b) Amount or maximum percentage of *contract sum* (clause 3) N/A
- c) Time for provision (clause 3) N/A
- d) *Purchaser's security* upon acceptance is reduced by (subclause 3.4) N/A

14	<i>Purchaser</i> -supplied documents (subclause 6.2)	Document	No. of copies
		1 Drawings	3
		2 Specifications	3
		3 .....	
		4 .....	
		5 .....	
		6 .....	

15	<i>Supplier</i> -supplied documents (subclause 6.3)	Document	No. of copies
		1 .....	
		2 .....	
		3 .....	
		4 .....	
		5 .....	
		6 .....	
		If nothing stated, 5 copies	

16 Time for *Purchaser's direction* about documents (subclause 6.3(b)) .....days  
If nothing stated, 14 days

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† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

17	Subcontract work requiring approval (subclause 7.2)	All ..... ..... ..... ..... .....
18	<i>Legislative requirements</i> , those excepted (subclause 10.1)	Nil..... ..... ..... .....
19	Reference date (clause 1, subclause 10.2(b))	..... If nothing stated, then the 14 <sup>th</sup> day prior to closing of tenders
20	Time by which Insurance cover for the <i>Equipment</i> is to be effected (subclause 13.1)	..... If nothing stated, then before the <i>Supplier</i> commences performance of the <i>Contract</i>
21	Public and product liability insurance (subclause 13.2)	
	(a) Is public liability insurance required?	Yes
	(b) If yes to (a), level of cover required	\$10,000,000
	(c) Period for which public liability insurance cover is required	Duration of the Contract
	(d) Is product liability insurance required	Yes
	(e) If yes to (d), level of cover required	\$10,000,000
	(f) Period for which product liability insurance cover is required	For the duration of the Contract and thereafter for 6 years.

22	<i>Qualifying causes of delay</i> , causes of delay for which <i>EOTs</i> will not be granted (page 3, subparagraph 1(b)(iii) of clause 1 and subclause 17.2)	None	..... ..... .....
† 23	Liquidated damages (subclause 17.5)	N/A	
† 24	Delay damages (a) other <i>compensable causes</i> (page 1, clause 1 and subclause 17.6)	N/A	
	(b) rate (subclause 17.6)	N/A	
25	Date for completion of <i>acceptance testing</i> (subclauses 18.1 and 21.1)	28 days after delivery	
26	Party responsible for unloading the <i>Equipment</i> (subclause 19.1)	..... ..... \$ ..... If nothing stated, the <i>Supplier</i>	
27	When risk in the <i>Equipment</i> passes (subclause 20.1)	From <i>delivery</i> ..... \$ ..... If nothing stated, risk in the <i>Equipment</i> shall pass on the later of <i>delivery, acceptance</i> or passing of ownership in accordance with subclause 20.2	
28	Time at which ownership of the <i>Equipment</i> passes to the <i>Purchaser</i> (subclause 20.2)	Time Item	..... ..... ..... ..... ..... ..... If no times stated, upon the date of payment under clause 24 for that item of <i>Equipment</i>

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\* Delete one

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A



- |    |   |  |
|----|---|--|
| 29 | Period for <i>Purchaser's</i> notice that <i>Equipment</i> is acceptable or rejected (subclause 21.1)   | .....days<br>If nothing stated, 7 days   |
| 30 | Period for <i>Purchaser's</i> notice accepting or rejecting <i>Supplier's</i> proposal (subclause 21.4) | .....days<br>If nothing stated, 7 days   |
| 31 | <i>Defects Liability period</i> (clause 22)   | .....<br>If nothing stated, 12 months  |
| 32 | Invoice (subclause 24.1)  |  |
|    | (a) Times for invoices  | ..... day of each month for work done to the<br>..... day of the month                 |
|    | OR  |  |
|    | (b) Milestones for the rendering of invoices  | On <i>delivery</i><br>.....<br>.....   |
| 33 | Period for payment (subclause 24.1)   | 30 days  |
| 34 | <i>Equipment</i> for which prepayment may be claimed (subclause 24.2)                                   | N/A<br>.....<br>.....  |
| 35 | Interest rate on overdue payments (subclause 24.537.5)  | 10 % per annum<br>If nothing stated, 18% per annum                                     |
| 36 | Arbitration (subclause 28.3)  |  |
|    | (a) Person to nominate an arbitrator  | President, Institute of Arbitrators and Mediators Australia or<br>his nominee<br>..... |

(b) Rules for arbitration

.....

If nothing stated:

- (i) Rules 5-18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations; or
- (ii) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 35(c)*

(b) Appointing Authority under UNCITRAL Arbitration Rules

President, Institute of Arbitrators and Mediations Australia  
 If nothing stated, the President of the Australasian Dispute Centre

‡ 37 The *Supplier's* liability is limited as follows (clause 29)

The respective limits apply to the sum of the respective claims and not to each claim

- a) For claims in respect of or arising out of death or personal injury: \$20,000,000.00
- b) For loss of rents, income (other than arising out of death or personal injury) and the opportunity to earn profits and indirect and consequential loss \$1.00  
 If no amount specified, then \$1.00
- c) For all other claims whatsoever 10% of the *Contract Sum*  
 If no amount specified, the *contract sum* as adjusted pursuant to the *Contract*

‡ 38 The *Purchaser's* liability is limited as follows (clause 29) 10% of the *Contract Sum*.....  
 If no amount specified, the *contract sum* as adjusted pursuant to the *Contract*

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 ‡ Delete of optional clause 29 is deleted

# Part A

## Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

<i>Separable portion</i> (clause 1)	N/A .....
Description of <i>separable portion</i> (clause 1)	..... ..... .....
<i>Item</i>	
7 (a) <i>Date for practical completion</i> (clause 1)	.....
OR	
(b) <i>Period of time for practical completion</i> (clause 1)	.....
14 <i>Contractor's security</i>	
(a) <i>Form</i> (clause 5)	.....
(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	..... If nothing stated, 5% of value of this separable portion
(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	..... % , until the limit in <i>Item 14(b)</i> If nothing stated, 10% , until the limit in <i>Item 14(b)</i>
(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	within..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days
(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	..... ..... \$ .....
(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	..... % of amount held If nothing stated, 50% of amount held

- 15 *Principal's security*
- (a) Form .....  
(clause 5)
  - (b) Amount or maximum .....  
percentage of value of this If nothing stated, nil  
*separable portion*  
(clause 5)
  - (c) Time for provision within..... days after *date of acceptance of tender*  
(clause 5) If nothing stated, 28 days
  - (d) *Principal's security upon certificate* ..... % of amount held  
*of practical completion* is reduced If nothing stated, 50% of amount held  
by  
(subclause 5.4)
- 29 Liquidated damages, rate .....  
(subclause 34.7) ..... per day \$ ..... per day
- 30 Bonus for early *practical completion*  
(subclause 34.8)
- (a) Rate .....  
..... per day \$ ..... per day
  - (b) Limit .....  
..... \$ .....
- OR
- ..... % of value of this *separable portion*  
If nothing stated, there is no waiver
- 31 Other *compensable causes* .....  
(paragraph (b) of clause 1 and .....  
subclause 34.9) .....  
.....

# Schedule 1

To the Contract between:

*[insert name]*

and

*[insert name ]*

## Special Conditions

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### 1. Specific Provisions relating to Supply

- 1.1 Unless details and dimensional tolerances have been clearly stated in the Contract Documents, the Supplier will use generally accepted details and dimensional tolerances as normally used by the Supplier.
- 1.2 Special surface finishes, treatments, coatings, waterproofing, rebates, recesses, penetrations, holes, cast-in items, fixings etc, if required by the Purchaser and which are not detailed in the Contract, shall be a deemed variation to the Contract.
- 1.3 Where the Supplier has agreed to supply design services for any part of the Equipment to the supplied and design loads are not clearly listed in the Contract, then, notwithstanding that these design loads may be able to be derived from, or may be implied by, documents forming part of this Contract, the design work and additional materials or components required by the absence of clearly listed design loads, will be deemed a variation to the Contract.
- 1.4 The Equipment to be supplied (and any other goods supplied by the Supplier) will remain the Supplier's property until paid for in full. If any monies remains unpaid, or the Purchaser is in breach of any obligation of the Contract, the Purchaser hereby authorises the Supplier or its agents to enter any premises to which any of the Equipment has been delivered or supplied and to recover any or all of the Equipment (and any other goods supplied by the Supplier).
- 1.5 The Purchaser authorises the Supplier to make such enquiries of third parties, and collect such information from third parties, as the Supplier may reasonably require in order to satisfy itself that the Purchaser has a good credit history. If after making such enquiries the Supplier is not fully satisfied of the creditworthiness of the Purchaser, the Supplier may require (at its sole and absolute discretion) payment of a deposit (not exceeding 30% of the Contract Sum) and/or personal guarantees for payment from third parties (to the satisfaction of the Supplier), prior to the Supplier commencing or continuing with its obligations under the Contract.

### 2. Miscellaneous

- 2.1 Claims for payment submitted by the Supplier may include claims for work carried out by the Supplier prior to manufacture or delivery of the Equipment and including any required design work. Such payment claims may also include claims for work and/or materials performed or acquired by the Supplier whether the Equipment to be supplied (or any parts thereof) have been delivered to the Purchaser or whether they remain in the possession or control of the Supplier.
- 2.2 Any change to the scope, quality or timing of the work or any material circumstance or event that changes the cost of performing the work from that reasonably foreseeable at the date of the Contract shall be deemed to be a

variation to the Contract, whether arising out of any oral or written instruction from the Purchaser or otherwise.

### **3. Surface Finish**

- 3.1 Off-mould surface finishes may contain pin holes, larger air bubble holes or mould stain. Off-steel form finishes, where used, will provide a Class 3 finish as defined in AS 3610-1995. Unless expressly noted otherwise in the Contract, further treatment to achieve a higher standard of finish will be deemed to be a variation to the Contract.
- 3.2 Unless expressly noted otherwise, use of concrete other than conventional grey concrete and finishes other than hand trowelling to unformed surfaces or standard finishes to flooring units, will be a deemed variation to the Contract.

### **4. Dimensions and Details**

- 4.1 It is the Purchaser's responsibility to provide the Supplier with complete and final dimensions and details prior to the Supplier commencing drawings and with sufficient time for the drawing, checking, approval, establishment, manufacturing and deliver processes to be completed in accordance with the delivery program. The Supplier will not be responsible for checking the accuracy or completeness or any plans documents or information supplied to the Supplier. Additional drawing, design, or manufacturing costs resulting from incompleteness, inaccuracies or changes to the information or dimensions supplied to the Supplier for drawing or design will be deemed a variation to the Contract.
- 4.2 It is the Purchaser's responsibility to check that the dimensions and details on the Supplier's drawings meet the requirements of this Contract. The Purchaser undertakes to provide written approval of the drawings, dimensions, and details provided by the Supplier, prior to the Supplier commencing manufacture of any moulds or precast components. The Supplier shall not be liable for any discrepancy between its detailed drawings and site conditions or dimensions, or for products manufactured in accordance with the Supplier's drawings but not meeting site requirements.

### **5. Deliveries**

- 5.1 The Supplier will not be required to change a delivery date or time if its prior commitments to other parties, or unavailability of plant, vehicles or personnel for any other reason, make it unreasonable or impracticable for the Supplier to do so using its normal resources and procedures.
- 5.2 Because trucks and other equipment may be mobilised or engaged to load the Equipment prior to the day of delivery, the Purchaser shall be liable for the costs (valued as a variation) if the Supplier if it cancels a scheduled delivery.
- 5.3 Delivery times will be subject to loading out during the Supplier's normal working hours and are subject to the availability of suitable vehicles. Delivery will only be made during normal weekday working hours and will be subject to any legal restrictions. The Supplier is not bound to accept any request for loading out or delivery outside normal weekday working hours, but if the Supplier does accept such a request, any additional costs will be deemed a variation under the Contract.
- 5.4 It is the Purchaser's responsibility to unload trucks without delay. In circumstances where a truck is at site in excess of one hour for unloading and/or waiting, through no fault of the Supplier, the Purchaser shall be liable for the additional costs associated with the delay.
- 5.5 Delivery and acceptance of the Equipment (or part thereof) to be Supplied shall be deemed to have been effected when a lifting device is attached to the subject

components at site, at which time responsibility for, and risk in the components (forming part of the Equipment) shall pass to the Purchaser.

**6. Warranty**

- 6.1 The Equipment (or any part thereof) is not guaranteed against any fading or discolouration of or changes to the surface finish, or distortion, caused by the environment or storage conditions and the Purchaser acknowledges that the Supplier has no liability for any such fading, discolouration, changes to the surface finish, or distortion.

**7. Inserts, Lifting Devices and Cast-in Items**

- 7.1 Where inserts, lifting devices or cast-in items are specified by persons other than the Supplier, the Supplier has no responsibility or liability in relation to their suitability or performance.
- 7.2 Lifting devices may be provided by the Supplier for its own use. Use of these by the Purchaser or others will be at the user's own risk and it will be the user's responsibility to ensure that such lifting devices are used correctly, with the proper equipment, and within their safe working capacities.
- 7.3 If the Supplier is required to cast in additional inserts, lifting devices, or other cast-in items, the costs associated with this additional work shall be deemed a variation to the Contract and the Supplier shall not be liable for the use or misuse of such additional items.
- 7.4 Removal of lifting inserts, filling of recesses, and making good after delivery, shall be the responsibility of the Purchaser.

**8. Construction Loads**

- 8.1 It is the Purchaser's responsibility to ensure that loads imposed after delivery and during construction do not overstress or damage the Equipment (or any part or parts thereof including any cast-in items).
- 8.2 It is the Purchaser's responsibility to ensure that loads applied to flooring units do not damage or exceed the safe load capacities of those flooring units, whether during storage, while propped or unpropped, before or after application of in situ concrete topping and connecting to the supporting structure, or at any other time.

**9. Prestressed Units**

- 9.1 Prestressing causes floor units and other sections to camber, distort, or deflect, and the Purchaser is responsible for making due allowance for those effects in the design, calculation and construction of support levels, floor to ceiling heights, the amount of in situ concrete topping required, alignment, fixings and connections and any other aspects of the construction which may be affected by the cambering, distortion, or deflection.

**10. Handling on Site**

- 10.1 Handling of precast items is required to conform to any relevant Code of Practice for the handling, transportation and erection of the Equipment. The Purchaser warrants that it will comply with all applicable provisions of the relevant Code.
- 10.2 The Purchaser acknowledges that thin or slender or prestressed items in particular may be damaged or may be subject to deformation from concrete creep if they are not handled or stored correctly. The Supplier accepts no liability for any such damage or deformation.
- 10.3 The Purchaser acknowledges that items such as wall panels or flooring units may be subject to distortion from thermal gradients, particularly when exposed to the sun on one face. The Supplier accepts no liability for any such distortion.

11. **Design and Inspections**

- 11.1 Unless expressly provided otherwise, the Supplier will not be required to provide to the Purchaser any statements or as built drawings, and will not undertake any design, engineering calculations, inspections, certifications or tests.



# Schedule 2

To the Contract between:

*[insert name]* and *[insert name ]*

## **AS 4911-2003 General Conditions of Contract**

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*AS 4911:2003 General Conditions of Contract for the supply of equipment without installation* are specifically incorporated in this Contract by reference, notwithstanding that no copy is attached.

Copies of AS 4911-2003 may be obtained from Standards Australia.

# Schedule 3

To the Contract between:  
*[insert name]* and *[insert name ]*

## **Annexures to AS 4911-2003 General Conditions**

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Refer to Annexures Part A, B & C attached.

# Schedule 4

To the Contract between:  
*[insert name]*

and

*[insert name ]*

## Scope of Work

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# Schedule 5

To the Contract between:  
*[insert name]* and *[insert name ]*

## Specifications

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Refer to relevant specifications

# Schedule 6

To the Contract between:  
*[insert name]* and

*[insert name ]*

## Drawings

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*[drawings to be inserted*

OR

*a list of contract drawings including revision numbers to be included]*

# Schedule 7

To the Contract between:

*[insert name]*

and

*[insert name ]*

## Schedule of Rates

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*[Insert relevant rates for plant and equipment and additional work]*

# Schedule 8

To the Contract between:

*[insert name]* and

*[insert name ]*

## **Delivery Program**

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*[Insert copy of delivery program or delivery dates that constitute program]*