



## **STANDARD TERMS AND CONDITIONS**

THE POLICY TERMS AND CONDITIONS DELINEATED HEREIN SHALL APPLY TO ALL QUOTATIONS AND OFFERS TO SELL, SHIP, DELIVERY AND SET PRODUCT:

### **ORDERING INSTRUCTIONS**

- Please reference applicable quotation number(s) and date on all orders. Indicate desired delivery dates, quantities, and item priority if applicable.
- Please contact our office for delivery schedules.
- Delivery lead-time will be estimated upon receipt of order. Lead-time is based on actual supply and demand constraints at the time the order is placed. Any dates discussed prior to order are non-binding estimates.
- Orders for non-standard products should be accompanied by all specifications, and blue prints or scale drawings.
- If the product ordered is to be set by Pro-Cast in its final location, then California sales tax (per Regulation 1521) is included in the sale price quoted.
- All other delivery conditions are subject to California State Sales Tax (per Regulation 1500). If sales tax was not included on the quoted price, it will be added at time of invoice.

### **SHIPPING POLICY**

- Customer shall be prepared to receive products at the specified delivery time. Unloading or standby time in excess of one hour, resetting or re-delivery not caused by Pro-Cast will be charged at the hourly rate for the personnel and equipment involved.
- Pro-Cast accepts responsibility for proper installation and assembly of its products only if included in agreement. Any product handled, moved, or installed by any persons not employed by Pro-Cast nullifies Pro-Cast of such responsibility.
- The customer will be solely responsible for the following:
  - A) Finish grade, leveling, and position of product.
  - B) Grouting, and/or sealing of vault sections, grade rings, risers, frames and covers, pipes, etc.
  - C) Excavation, bedding, shoring, backfilling, compacting and grading.
  - D) Water in the excavation and/or flotation control.
  - E) Setting and adjusting ladders, racking, grates or other hardware.
  - F) All others site work not specifically referred to.
  - G) Customer shall supply a one or two man crew to assist the Pro-Cast crane operator.
- Carriers contracted by Customer are responsible for goods lost or damaged in transit. Damages or shortages should be indicated on the carrier's delivery receipt and any claims should be made in writing directly to the carrier.

- Equipment belonging to Pro-Cast cannot be left at any jobsite for the purpose of unloading or setting by others unless previously agreed to in writing between Pro-Cast and the customer.
  - All products will be delivered in the number of trips specified. Should customer controlled, or circumstances outside the control of Pro-Cast prevent such designated number of trips, owner shall be charged for any and all additional trips.
1. Acceptance: These terms and conditions may be accepted only on the exact terms set forth. These terms and conditions supersede the terms and conditions of any Pro-Cast's proposals and quotations that might have been previously presented.
  2. Goods To Be Provided: Pro-Cast Products, Inc. ("Pro-Cast") agrees to sell to Customer, on the terms and conditions stated herein, the materials and related items (the "Goods") identified in Pro-Cast quotation to Customer. Customer is solely responsible for determining whether the Goods listed are the correct types and quantity needed by Customer. Pro-Cast's offer to sell is based upon Customer's approval of Pro-Cast standard product drawings or submittals, and not in accordance with any plans and specifications, unless agreed to in writing in advance by a duly authorized representative of Pro-Cast.
  3. No Additional Terms Of Sale: Customer's acceptance of Pro-Cast's quotation is limited to these Terms and Conditions. Any new or different terms or conditions stated or proposed by Customer in its acceptance of Pro-Cast's quotation or in any accompanying or related purchase order or other document are hereby rejected by Pro-Cast and shall not be binding upon Pro-Cast. This writing constitutes the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement.
  4. Payment Terms: Pro-Cast may require partial payment, or in some cases, payment in-full prior to manufacturing or shipment of any goods. If Pro-Cast agrees to provide materials on a "Cash On Delivery" basis, payment in full is due upon arrival of Pro-Cast materials, prior to setting of product or unloading of trucks. Credit sales will be made only after receipt of a signed Pro-Cast credit application and written credit approval by Pro-Cast's credit manager. On all credit sales, payment in full is due within 30 days after Customer's receipt of material or services. Customer agrees to pay a service charge of 1.5% per month on all invoices not paid when due. At its option, Pro-Cast may decline to make delivery or shipment to Customer if any invoice remains past due. Customer waives and releases any claim against Pro-Cast for loss or damage allegedly sustained by Customer as a result of Pro-Cast's refusal to make delivery or shipment under such circumstances. All payments shall be made in U.S. dollars and, unless otherwise designated by Pro-Cast in writing, shall be sent to Pro-Cast's place of business at P.O. Box 602, Highland, California. Credit card charges are subject to a 2% service charge. Large credit card purchases require management approval.
  5. Price: The prices stated in Pro-Cast quotation to Customer are firm for 30 days and subject to sales tax per California sales tax Regulation 1500 or use tax per Regulation 1521. Customer shall reimburse Pro-Cast for all sales and use taxes imposed upon: (a) the sale of the goods; and/or, (b) the use of any materials

consumed by Pro-Cast; or/and, (c) the sale of any fixtures or equipment incident to this contract. Prices are subject to delivery charges unless quoted as delivered (see shipping code definitions on quotation). A fuel surcharge may be applicable with rising fuel cost.

6. Time For Performance: Pro-Cast will endeavor to meet any reasonable shipping date(s) requested by Customer. However, Pro-Cast does not guarantee that the goods will be furnished by any particular date unless specifically agreed to in writing. All shipping dates stated or indicated are estimates only and are based upon conditions known at the time the dates were stated or indicated. Pro-Cast shall not in any event be liable for any loss or damage sustained by Customer on account of failure to meet any delivery or shipping date.
7. Delivery: Customer or its designated representative shall be prepared to unload, receive, and accept the goods at the time specified on the order. Customer shall provide assistance in delivering the goods, including but not limited to assisting in backing and directing Pro-Cast's truck at the delivery site, providing access to the delivery site that is acceptable to Pro-Cast, and providing a setting location for the truck, crane or other delivery equipment that is acceptable to Pro-Cast. Pro-Cast shall not be liable for any property damage to sidewalks, curbs, fences, valves, conduit, pipes, concrete, asphalt, lawns, trees, or landscaping. All excessive unloading or stand-by time, resetting or re-delivery will be charged for at the current hourly or mileage rates of the equipment involved. If for any reason Pro-Cast cannot set the goods at the time of delivery, Customer shall be responsible for setting the goods by other means, at no cost to Pro-Cast. Pro-Cast reserves the right to increase the cost of delivery or shipment if Customer increases mileage or number of trucks specified in the original quotation. Prices quoted are based on quantities indicated, and on customer acceptance of the entire quote. Pro-Cast reserves the right to accept or reject partial orders. Customer is required to notify Pro-Cast, at least one business day in advance, if there is going to be any problems at the site location in accommodating the above listed delivery requirements.
8. Returns: Goods shall not be returned for credit without prior written authorization and approval by a duly authorized representative of Pro-Cast. A minimum handling charge of 15% plus actual shipping or delivery costs shall be made on all goods returned to compensate for costs of accounting, reconditioning, restocking and delivery, except when due to fault or error of Pro-Cast. No credits shall be allowed on used, damaged, custom, specially ordered or specially manufactured goods. Customer shall bear the cost of any labor, damage or transportation associated with return of the goods.
9. Order Cancellation: Should Customer cancel any pending order, Customer will be responsible for all Goods previously delivered, shipped, manufactured, and currently being manufactured at time of cancellation in addition to any incurred set-up charges or materials ordered by Pro-Cast for the Goods.
10. Equipment: Unless otherwise agreed to in a writing signed by a duly authorized representative of Pro-Cast, equipment belonging to Pro-Cast cannot be left at any job site for the purpose of unloading or setting by others.

11. Project Information: Customer agrees to furnish to Pro-Cast, promptly upon request, all project information necessary for Pro-Cast to perfect or provide notice of its mechanic's lien, stop notice, and/or payment bond rights.
12. Force Majeure: Pro-Cast will not be liable for any delay or for failure to perform its obligations hereunder resulting from any cause beyond Pro-Cast's reasonable control including, but not limited to: Customer's failure to timely supply Pro-Cast with necessary data or specifications; any charges in such data or specifications at Customer's request; fires; explosions; floods; acts of God; epidemics; quarantine; embargoes; strikes; work stoppages or slowdowns or other industrial disputes; accidents; riots or civil disturbances; acts of civil or military authorities; inability to obtain any license or consent necessary in respect of any the goods; inability to obtain equipment, materials, labor, fuel or supplies; and delay by suppliers or material shortages.
13. Limited Warranty: For a period of one year from the date of shipment or delivery to Customer, Pro-Cast warrants all of the Goods which it has manufactured to be free of material defects. If any such goods are found to be materially defective during the warranty period, Pro-Cast agrees to, in its sole discretion, repair or replace the defective goods without charge to Customer. Customer's remedy with respect to such goods is limited to repair or replacement. For goods not manufactured by Pro-Cast, Customer agrees to accept as its sole remedy the warranty, if any, offered by the manufacturer or manufacturers of such goods. **AS TO ALL GOODS SOLD BY PRO-CAST TO CUSTOMER, THE WARRANTY DESCRIBED IN THIS PARAGRAPH SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PRO-CAST SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR LIQUIDATED DAMAGES OR ANY KIND, WHETHER THE CUSTOMER'S CLAIM IS BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.**
14. Indemnity: Customer is solely responsible for the selection, installation, and use of the goods. Therefore, to the fullest extent permitted by law, Customer agrees to defend and indemnify Pro-Cast from and against any claim for loss or damage, including attorneys' fees and experts' or consultants' fees, arising from or relating to such selection, installation, and use. This indemnity applies regardless of any active and/or passive negligent act or omission on the part of Pro-Cast or its employees; provided, however, Customer shall not be obligated to indemnify Pro-Cast for the sole negligence or willful misconduct of Pro-Cast or its employees.
15. Risk of Loss: The risk of loss shall pass to Customer based on the applicable shipping code:
  - (a) "Delivered and Set": Risk of loss shall pass to Customer when Pro-Cast delivery truck has unloaded the product.
  - (b) "Delivered – F.O.B. Truck": Risk of loss shall pass to Customer when Pro-Cast delivery truck arrives at Customer's jobsite.
  - (c) "Delivered and offloaded": Risk of loss shall pass to Customer when Pro-Cast delivery truck arrives at Customer's jobsite and offloads materials.

- (d) "F.O.B. Pro-Cast Yard": Risk of loss shall pass upon tender of delivery of the goods to a common carrier or Customer's truck. Buyer shall procure and maintain insurance on the goods sufficient to protect its interests.
16. Dispute Resolution: All disputes arising from or relating to these Terms and Conditions of Sale and/or the furnishing of any goods by Pro-Cast to Customer shall be heard and decided exclusively in a State or Federal Court located in the state of California. These Terms and Conditions of Sale shall be construed and enforced in accordance with the laws of the State of California. In any legal proceedings, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.
17. Submittals and Tests: Pro-Cast reserves the right to charge customers for the cost of submittals, engineering or tests that are in addition to those customarily provided.
18. Custom Products: Custom orders shall be handled on an order-by-order basis.
19. Used or Refurbished Materials: Should customer wish to purchase or lease used or refurbished materials, Customer shall come to the Pro-Cast facilities to inspect and approve the condition of such non-new materials prior to Pro-Cast shipping such items.

## SHIPPING CODE DEFINITIONS

### DELIVERED AND SET

Quoted prices include product delivery and setting with our boom truck subject to the following provision:

- 1) Pro-Cast will provide driver/crane operator services only using Pro-Cast boom truck.
- 2) Customer will be solely responsible for all other site work associated with setting and installing this product unless specifically referred to in writing.
- 3) Most products require assistance from the Customer in setting (generally one or two laborers). Contact Pro-Cast for the specific requirements of each product type.
- 4) The Customer will provide a properly prepared, sized and graded, excavation. Access and setting location for our boom truck which must be acceptable to our driver or representative.
- 5) Since site conditions, products, and delivery equipment vary, the logistics must be considered to determine the best approach for seeing the product. Attention must be given to the variable of the set, including:
  - A) Capacity of the Pro-Cast boom truck and truck crane to be used.
  - B) The maximum product weight relative to the setting distance from the center of the crane to the center of the excavation cannot exceed the boom truck rated capacity.
  - C) The route to the setting location must be accessible for the boom truck without towing or pushing.
  - D) The type of terrain, site slope, and ground conditions for outrigger footings, at the setting location.
  - E) Overhead restrictions and other physical constraints.
- 6) Any or all of the above could prevent Pro-Cast from setting the product. In cases where Pro-Cast cannot set the product, Pro-Cast will off load the product in accordance with standard delivery-only procedures herein.

**NOTE: If for any reason Pro-Cast cannot set the product, Pro-cast will not be responsible, or charged, for setting by any other means.**

**DELIVERED – F.O.B. TRUCK:**

Quoted prices include product delivery to the job site only, “Free On Board” the truck. Generally, this would be a flatbed truck without a crane or other unloading equipment subject to the following provisions:

1. The company will provide driver services only and the Customer shall supply means of unloading and setting products in a timely manner.

**DELIVERED AND OFFLOADED:**

Quoted prices include product delivery to the job site and unloaded from our truck subject to the following provisions:

1. Pro-Cast will provide driver services and a means of unloading products.
2. The Customer will provide an acceptable location for unloading and storing products, and the means for setting the product in the permanent location.

**F.O.B. – PRO-CAST YARD**

Quoted prices include product loading on Customer or common carrier trucks in the yard subject to the following provisions:

1. Customer will be responsible for any additional charges, including charges for freight, shipping, delivery and setting.
2. Customer or common carrier will be responsible for tie down, dunnage, pallets, etc., unless specifically referred to.
3. Yard location will be addressed in section one of the quotation.

**OTHER AS SPECIFIED**

If not specified in section one of this quotation, please consult our office for more specific information or written clarification.

**DELIVERED IN FULL TRUCK QUANTITIES OR A COMBINED SHIPMENT:**

Quoted prices include delivery and/or setting as delineated above:

1. Delivered in combination with other products in the quotation.
2. Delivered when Pro-Cast is otherwise on the jobsite.
3. Delivered in full truckload quantities.

**Delivery Pre-Attached**

Quoted prices include item pre-attached or installed on an item that is also being delivered.

**Assembled and Sealed**

Pro-Cast will provide delivery as specified in the quote per codes 1-5 above, and will additionally provide assembly and sealing of the structural components of the vault or tank. Customer will be responsible for installing and sealing grade rings, rings and covers, and any other installation or site work required.