

1. **General** These Terms and Conditions together with the relevant quotation from the Concrete Placer ("the Quotation") constitute the entire Agreement between the parties to carry out concrete placing work ("the Work") except to the extent that modifications are agreed to in writing between the Concrete Placer and the Customer. It is expressly agreed that there are no other understandings, representations, or warranties of any kind forming part of any agreement to carry out the Work.

These Terms and Conditions apply where the Work involves the supply and placing of concrete, the placing only of concrete supplied by the Customer, or the provision of labour services to place concrete supplied by the Customer.

2. **The Work** The scope of the Work shall, subject to Variations, be as set out in the Quotation and in accordance with drawings and specifications (if any) referenced in the Quotation ("the Drawings and Specifications").

The Concrete Placer shall carry out the Work in accordance with best trade practice, the Drawings and Specifications, and relevant New Zealand Standards.

3. **Exclusions** Unless expressly agreed in writing the Concrete Placer shall not be responsible for any of the following in relation to the Work, which if required shall be at the Customer's cost:
- Safe access to the working area for materials, equipment and personnel.
 - Access for concrete delivery trucks, concrete pumps, and any traffic control measures.
 - Temporary water and power supply and safety lighting.
 - Scaffolding and safety barriers.
 - Excavation of rock (where the Work includes excavation).
 - Engineering or other inspections required before or after concrete placing.
 - Searching for or identifying the location of existing services.
 - Damage to existing services which are not as notified, or for which the location was not notified, by the Customer.
 - Altering, upgrading or relocating any existing services.
 - Consents including but not limited to building consents and approvals for traffic management.
 - Protection to finished concrete surfaces.
 - The repair of damage to finished concrete surfaces unless caused by the Concrete Placer, its employees, or persons for whom the Concrete Placer is responsible.
4. **Customer responsibilities** Unless otherwise expressly agreed the Customer shall also be responsible for:
- Selecting or specifying materials and ensuring their suitability for the intended purpose.
 - Confirming in writing before work proceeds the finished heights, levels and falls that are to be achieved.
 - Providing all information which may pertain to the work including information on the location of kerbs, footpaths, drains, pipes, cables and service points relating to electricity, water, telecommunications or other services.
 - Providing facilities and ablutions for use by the Concrete Placer's site personnel.
 - The suitability of the ground conditions or other substrate on which concrete is to be poured.
5. **Labour Only Services** Where the Concrete Placer is engaged to provide labour only for concrete placing and unless

otherwise agreed the Customer shall, in addition, be responsible for:

- (a) Marking and setting out finished levels.
- (b) Ensuring adequate compaction of sub-base and proper placement of reinforcing steel.
- (c) Mechanical means such as pump or crane to deliver concrete to the work area.
- (d) All additives such as rapid hardener during winter months.
- (e) All protection and curing of new concrete, including evaporation retardant or other applications, for a period of not less than 7 days after completion.

6. **Contract Price** The prices and rates stated in each contract or Quotation are exclusive of Goods and Services Tax unless stated otherwise.

The Customer shall pay the Concrete Placer the contract price, as applicable:

- (a) Where the Work is a firm lump sum price, the accepted price as adjusted by Variations; or
- (b) Where the Work is to be valued on a measure and value basis, the net quantity of work carried out at the relevant rates, or on a cost reimbursement basis where no rate is agreed; or
- (c) Where the Work is to be carried on a cost reimbursement basis, the number of hours worked at the agreed rates, plus the cost of materials, plant hire rates and subcontractors together with margin for overhead and profit. Where rates and margins have not been agreed the Concrete Placer's current standard rates and margins shall apply.

7. **Variations** Matters to be treated as Variations include but are not limited to increased or decreased quantities, changes in materials, levels, lines or positions of the Work from that indicated in the Drawings and Specifications, and unforeseen matters such as poor ground conditions, rock, hazards or obstacles which cause the Concrete Placer to incur additional cost, or costs incurred by the Concrete Placer in relation to clauses 3 to 5 above.

All Variations shall be instructed in writing, but a failure to record an instruction in writing shall not invalidate a Variation. Where the Customer issues an instruction orally or in writing which the Concrete Placer reasonably believes to be a Variation, the Concrete Placer will provide written notice to that effect as soon as practicable.

The value of each Variation shall where practicable be agreed before work proceeds. Failing agreement Variations shall be valued on a measure and value or cost reimbursement basis as applicable in accordance with clause 6.

8. **Payments** If the Work is not completed within one calendar month the Concrete Placer may serve a progress payment claim for the work carried out up to the end of each fortnight. Progress payments shall be made without retention, setoff or deduction not later than 7 working days after the date of service of the relevant payment claim.
- The Customer may serve a payment schedule at any time on or before the due date for payment.
- If any payment has not been made to the Concrete Placer by the due date for payment the Concrete Placer may, in addition to any other rights, suspend work forthwith upon

written notice and recover on demand from the Customer as a debt due:

- (a) Interest on all overdue amounts at the rate of 1.5% per month, compounding monthly, from the due date down to the actual date payment is made; and
- (b) All actual and reasonable costs, charges, legal expenses on a solicitor-client basis costs and collection costs incurred by the Concrete Placer in recovering or attempting to recover the outstanding amount.

9. **Delivery** All delivery times advised by the Concrete Placer are made in good faith, as estimates and not as commitments where delivery is beyond the direct control of the Concrete Placer. Where dates for completion are expressly agreed those dates shall be extended for such matters as adverse weather, customer delay in providing access, the effect of Variations, delivery delays, a force majeure event, or any other matter beyond the reasonable control of the Concrete Placer.

10. **Contra Charges** The parties agree that contra charges shall not be made. Where the Customer considers that the Concrete Placer is liable for cost the Customer shall provide written notice, allowing the Concrete Placer to investigate and attend to the matter, issue a purchase order, or otherwise respond.

11. **Insurance** The Customer is responsible for the site and shall take out and maintain construction insurance in respect of the Work and pay any deductible applicable under such policy or policies.

The Concrete Placer shall at all times maintain public liability insurance in respect of the Work.

12. **Liability of the Concrete Placer** To the maximum extent permitted by law the liability of the Concrete Placer does not extend to consequential costs and losses of any nature, or to any costs and losses of any kind incurred by any third party. The Concrete Placer's liability shall not in any event exceed the contract price.

13. **Subcontracting and Assignment** The Concrete Placer may subcontract or assign the Work. The Customer's rights under this agreement may only be assigned with the prior written consent of the Concrete Placer.

14. **Force Majeure** The Concrete Placer shall not be liable to the Customer or to any third party for any loss or damage arising directly or indirectly out of any delay or failure in the delivery of goods or the performance of services where such delay or failure is caused directly or indirectly by an act of God, natural perils including but not limited to earthquake, storm, flood, fire, labour dispute, civil commotion, Government intervention, inability to obtain labour, materials or manufacturing facilities, accident, interruption or delay in transportation, any act or omission of the Customer or any other person, or for any other cause beyond the Concrete Placer's control.

15. **Concrete Cracking and Finishes** The Concrete Placer will take reasonable measures to ensure that the drying of concrete occurs naturally, and will form expansion cuts where specified or where not specified where reasonably considered necessary. The Customer acknowledges that cracking may occur due to causes beyond the control of the Concrete Placer

including substrate movement, the natural drying process, concrete pump failures, and late delivery of concrete.

The Customer acknowledges that concrete is a natural product and that the Concrete Placer does not and cannot guarantee the finish, colour or texture of concrete including coloured, exposed aggregate or polished concrete finishes.

16. **Health and Safety** The Concrete Placer will take all reasonable precautions and will comply with the requirements of the Health and Safety at Work Act 2015 ("the HSE" Act) in the carrying out of work. The Concrete Placer has not and will not, as the agent of the Customer or otherwise, at any time assume any obligation that may be imposed on the Customer pursuant to the HSE Act. The Concrete Placer and the Customer agree that, for the purpose of the HSE Act, the Concrete Placer shall control its business undertaking but will not, and is not required to, control the place of work.

The Customer shall notify the Concrete Placer in writing of any existing or potential hazard affecting the work and shall take all practicable steps to ensure that no person is harmed.

17. **No Contracting Out** Nothing in these terms and conditions or in any quotation shall be deemed to contract out of any obligation that the Concrete Placer may have to the Customer in respect of either:

- (a) The Consumer Guarantees Act 1993, where the Concrete Placer provides services to a Customer who is a consumer as defined in that Act; or
- (b) The implied warranties under section 362I of the Building Act 2004, where the agreement is for building work in relation to a household unit in respect of which the Customer is the owner as defined in that Act.

Those Acts shall prevail where and to the extent that there is conflict between these Terms and Conditions and the relevant provisions of those Acts and as set out in clauses 21 to 24 inclusive.

18. **Working Hours** Unless otherwise agreed the work shall be carried out on working days as they are defined in the Construction Contracts Act 2002 and during normal working hours. The Concrete Placer may charge overtime for work that is required to be performed outside of those times.

19. **Disputes** The Customer and the Builder shall endeavour to promptly resolve disputes amicably, and failing settlement by mediation or arbitration under the Arbitration Act 1996, or by adjudication under the Construction Contracts Act 2002.

20. **Validity** The Concrete Placer's Quotation shall be valid for a period not exceeding 30 days. Thereafter the Concrete Placer may, at its sole option and when requested confirm that the quotation remains valid for a further period or provide a new quotation.

PARTICULAR REQUIREMENTS FOR RESIDENTIAL BUILDING WORK

- 21. Particular Requirements for Contracts** In order to comply with Building (Residential Consumer Rights and Remedies) Regulations 2014 the Concrete Placer must ensure, where the Customer is a residential consumer and the Work is residential building work as defined in the Building Act 2004 (“Residential Building Work”) having a value in excess of \$30,000 including GST (or where requested by the Customer), that a written contract is entered into between the Concrete Placer and the Customer.
- 22. Disclosure** The Concrete Placer must, before entering into a written contract provide to the Customer (as a potential client):
- (a) A prescribed checklist; and
 - (b) A prescribed disclosure statement including information about the Concrete Placer’s skills, qualifications, licensing status and any applicable insurance or guarantees.
- 23. Maintenance** The Concrete Placer must, on completion, provide the Customer with information regarding ongoing maintenance requirements, insurance policies and guarantees (if any).
- 24. Warranties** In addition to the foregoing provisions all Residential Building Work is subject to an automatic 12-month defect repair period commencing from completion of the Work, during which the Concrete Placer must promptly remedy defects advised in writing by the Customer; and implied warranties covering matters such as compliance with the Building Code to good workmanship and timely completion of building work set out in section 362I of the Building Act 2004.