

TOTAL CONCRETE PTY LIMITED ACN 649 890 817 (ABN 91 649 890 817)

TERMS

1. Definitions and Interpretations

1.1 Definitions

In this agreement unless the context indicates otherwise, the following words have the following meanings.

Agreement means the Terms and the Quotation.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Client means the person specified in the Quotation.

Commencement date means the date set out in the Quotation.

Completion date means the date set out in the Quotation or such other date as the Parties may agree.

Confidential Information includes any information marked as confidential and any information received or developed by the Supplier during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by the Client in the course of the Client's business. This includes all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Facilities means working space and includes access to such resources but also use of them to the extent required by the Supplier in order to perform the Services.

Fees means the fees set out in the Quotation.

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property includes trademarks, patents, copyrights, processes, know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Losses means all losses including financial losses, damages, legal costs, and other expenses of any nature whatsoever.

Parties means the Supplier and the Company, and **Party** means either one of them.

Quotation means the quote provided by the Supplier and accepted by the Client.

Related Body Corporate has the meaning given in section 50 of the Corporations Act 2001 (Cth).

Services means the services to be provided by the Supplier under this agreement.

Specification means the details of the Services as set out in the specification.

Supplier means Total Concrete Pty Limited ACN 649 890 817 (ABN 91 649 890 817)

Supplier's Personnel means any person or persons that the Supplier designates to perform the Services on the Supplier's behalf.

Termination Date means the earlier of:

- (a) the date of termination of this agreement by the Client or the Supplier; and
- (b) the date of expiry of this agreement.

Terms means the agreement without the Quotation.

Working space means the place or places specified in the Quotation.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include forms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this agreement;
- (e) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

- (g) the headings to the clauses and schedules of this agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (i) the word “including” (and related forms including “includes”) means “including without limitation”.

2. Services

- (a) The Supplier will provide the Services to the Client in consideration for the Client paying the Fee to the Supplier, subject to the provisions of this agreement.
- (b) The Supplier and the Client will agree the time and place for the performance of the Services.
- (c) The Supplier will use reasonable endeavours to complete the Services.
- (d) The Services will be performed by the employees or agents that the Supplier may choose as most appropriate to carry out the Services.
- (e) The Services to be performed as in the Quotation, or as otherwise agreed by the Parties in writing.

3. Location

The Supplier will provide the Services in places and locations specified in the quotation or as otherwise agreed between the parties.

4. Fees

4.1 Payment of Fees

- (a) In consideration of the provision of the Services in accordance with this agreement, the Client will pay the Supplier the Fees.
- (b) The Client acknowledges that the Fees are exclusive of any GST that may be charged by the Supplier to the Client (unless otherwise indicated) , and therefore, the Supplier will be entitled to add on GST.

4.2 Invoicing

- (a) The Supplier will provide the Client with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4.
- (b) Payment will be made by the Client to the Supplier within 7 days after receiving the Supplier's invoice.
- (c) When making a payment, the Client must quote relevant reference numbers and the invoice number.
- (d) The invoice referred to in 4.2(b) must include the following details before payment can be approved and forwarded:
 - (i) date of Services;
 - (ii) name of individual provided by the Supplier;
 - (iii) description of Services provided;
 - (iv) time allocated per task; and
 - (v) the ABN of the Supplier.

4.3 Variation of Fees

The Supplier is entitled to vary the rates during the term of this agreement with written notice to the Client of 14 days prior to the change being implemented.

4.4 Failure to pay

If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the agreement, the Supplier is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 15% per year accruing daily;
- (b) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) not perform any further Services (or any part of the Services).

5. Supplier's Personnel

- (a) If the Client:
 - (i) makes a notice in writing to the Supplier; and

- (ii) has reasonable grounds which have been disclosed and discussed with the Supplier, the Client may require the Supplier to cease to permit a particular person or persons employed by the Supplier or acting as agents of the Supplier to carry out the Services.
- (b) If the Client makes the requirement referred to in clause 5(a), the Supplier must, as soon as it is practicable:
 - (i) cease to provide the service of the particular person or persons in respect of the Client's business; and
 - (ii) provide the services of an alternative person or persons as may be reasonably acceptable to the Client.

6. Client's obligations

- (a) During (the preparation of the Specification and) performance of the Services and the Client will:
 - (i) co-operate with the Supplier as the Supplier reasonably requires;
 - (ii) provide the information and documentation that the Supplier reasonably requires;
 - (iii) make available to the Supplier such Facilities as the Supplier reasonably requires; and
 - (iv) ensure that the Client's staff and agents co-operate with and assist the Supplier.
- (b) The Client will not charge for the Supplier's use of the Facilities made available by the Client.
- (c) If the Client does not provide the Facilities that the Supplier reasonably requires (and within the time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by the Supplier will be paid by the Client.

7. No partnership or employment relationship

- (a) Nothing in this agreement constitutes the relationship of employer and employee between the Client and the Supplier or between the Client and the Supplier's Personnel.
- (b) It is the express intention of the Parties that any such relationships are denied.

8. Use of subcontractors

- (a) The Supplier is permitted to use other persons to provide some or all of the Services.
- (b) The Supplier is responsible for the work of any of the Supplier's subcontractors.
- (c) Subject to clause 8(d), any work undertaken by any of the Supplier's subcontractors will be undertaken to the same standard as stated in this agreement and the Specification.
- (d) To the extent that the terms of any subcontract stipulate a higher standard for any of the Services than the standards set out in this agreement (including as to timing or quality), any Services provided by the relevant subcontractor will be governed by the terms and conditions of that subcontractor's subcontract.

9. Confidentiality

- (a) The Supplier must keep the Client's and any Related Body Corporate of the Client's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) The Client and the Supplier acknowledge that information resulting from the activities of the Supplier pursuant to this agreement will also be regarded as Confidential Information. The Supplier agrees that the Supplier's obligations in clause 9(a) extend to this category of information.
- (c) The Supplier's obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis by:
 - (i) the Client, in the case of Confidential Information pertaining to the Client's business; and
 - (ii) the Client's client, in the case of Confidential Information pertaining to the business of any of the Client's clients.
- (d) At the Termination Date, or when earlier directed by the Client:
 - (i) all Confidential Information must be returned to the Client, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the Supplier makes and any software that the Supplier creates based on the Confidential Information; and

- (ii) the Supplier will must erase and destroy any copies of software containing or comprising the Confidential Information in the Supplier's possession or under the Supplier's control or that may have been loaded onto a computer possessed or controlled by the Supplier.
- (e) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 9(a) by the Supplier; or
 - (ii) was known by the Supplier prior to the Client disclosing the information to the Supplier.
- (f) The Supplier agrees that the Client may require any of the Supplier's Personnel to sign a confidentiality agreement in a form that the Client approves, as a condition of the Client's acceptance of any of the Supplier's Personnel.
- (g) The Supplier agrees to indemnify the Client fully against all liabilities, costs and expenses which the Client may incur as a result of any breach of this clause 9 by the Supplier.
- (h) The Supplier acknowledges that damages may be an inadequate remedy for breach of this clause 9 and that the Client may obtain injunctive relief against the Supplier for any breach of this clause 9.
- (i) The obligations accepted by the Supplier under this clause 9 survive termination or expiry of this agreement.

10. Warranties, liability and indemnities

10.1 Warranties

- (a) The Supplier warrants that it will use reasonable care and skill in performing the Services.
- (b) If the Supplier performs the Services (or any part of the Services) negligently or in breach of this agreement (including any part of the Specification), then, if requested by the Client, the Supplier will re-perform the relevant part of the Services, subject to paragraphs 10.6(a) and 10.6(b) below.
- (c) The Client's request referred to in paragraph 10.1(b) must be made within 6 months of the date the Supplier completed performing the Services.

10.2 Insurances

The Supplier must take out all insurance required by law including:

- (a) worker's compensation insurance as prescribed by law for the Supplier's personnel; and
- (b) public liability insurance for a minimum of an amount to be agreed for each occurrence.

10.3 Employees and subcontractors

- (a) The Supplier covenants that the Supplier is solely responsible for the payment to the Supplier's employees and agents of all amounts due by way of salary, superannuation, annual leave, long service leave and any other benefits to which they are entitled as the Supplier's employees or agents.
- (b) The Supplier must otherwise comply with legislation applicable to the Supplier's employees and agents.

10.4 Compliance with all laws

Throughout this agreement the Supplier must comply at the Supplier's own cost and expense with all acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements of any Commonwealth, State and Local Government departments, bodies, and public authorities or other authority. This requirement applies to the Supplier or to the Services. The Supplier must indemnify the Client from and against all actions, costs, charges, claims and demands in respect thereof.

10.5 No warranties in relation to completion

The Supplier provides no warranty that any result or objective can or will be achieved or attained at all or by (a given completion date / the Completion Date) or any other date, whether stated in this agreement, the Specification or elsewhere.

10.6 Limitation on liability

- (a) Except in the case of death or personal injury caused by the Supplier's negligence, the liability of the Supplier under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Client to the Supplier under this agreement. The provisions of 10.6(a) will not apply to clauses 10.4 or 10.7.
- (b) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential

nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause do not apply to clauses 10.4 or 10.7.

10.7 Indemnity

The Client must indemnify and hold the Supplier harmless from and against all claims and losses arising from loss, damage, liability, injury to the Supplier, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Client by the Supplier, its employees or suppliers, or supplied to the Supplier by the Client within or without the scope of this agreement.

10.8 No reliance

Each of the Parties acknowledges that, in entering into this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

10.9 ABN

- a) The Supplier must supply the Client with evidence of the Supplier's ABN and must include this number on any statement provided to the Client.
- b) The Supplier acknowledges that if the Supplier fails to provide an ABN, then the Client is entitled to withhold any proportion of the payments to the Supplier as may be required under the relevant law for tax purposes.

10.10 Limitation Supplier's power

- a) The Supplier warrants that he or she has no authority to engage the services of any person as an employee or agent of the Client.
- b) The Supplier warrants that the Supplier will not incur any liability on behalf of the Company or in any way pledge or purport to pledge the Client's credit or accept any other or make any contract binding upon the Client without prior approval being given by the Client.

10.11 Survival of obligations

The obligations accepted by the Supplier and the Client under this clause 10 survive termination or expiry of this agreement.

11. Termination

- a) Either Party may terminate this agreement by notice in writing to the other if the Party notified:
 - (i) fails to observe any term of this agreement; and
 - (ii) fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 7 days notice of the breach being given in writing by the notifying Party to the other Party.
- b) Either Party may terminate this agreement upon the happening of any of the following events:
 - (i) the giving of at least 1 month's written notice by one Party to the other Party of the intention to terminate this agreement;
 - (ii) if the Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Client pursuant to the Corporations Act 2001 (Cth); or
 - (iv) if the Client would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).
- c) The Client may, at its discretion, pay to the Supplier the equivalent amount of the fees payable by the Client to the Supplier during the notice period in lieu of any notice period relating to the termination of this agreement under paragraph 11(a)(i).
- d) Upon termination of this agreement any fees, expenses or reimbursements payable by the Client to the Supplier in respect of any period prior to the Termination Date must be paid by the Client within 7 days after the Termination Date.

12 Use of promotional activity material

The Client acknowledges that the Supplier may take photographs of the working space prior to the services being performed and after the services have been performed. The Client consents to the Supplier using such photographs to promote the Supplier's business in whatever form the Supplier deems fit.

13 General

13.1 Force majeure

- a) Neither Party has any liability under or may be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that Party.
- b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- c) If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this agreement by written notice to the other Party.

These include but are not limited to:-

- i) Damage by fire, explosion, war, civic commotion or act of God;
- ii) Disputes with neighbours;
- iii) Delay by an authority in giving any necessary approval;
- iv) Weather conditions that prevent work under normal construction practices;
- v) Industrial dispute including strikes; and
- vi) A combination of these or any other causes beyond the Parties reasonable control.

13.2 Amendment

This agreement may only be amended in writing signed by duly authorised representatives of the Parties.

13.3 Assignment

- a) Subject to paragraph 13.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written agreement of the other Party.
- b) A Party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this agreement.

13.4 Entire agreement

- a) This agreement contains the whole agreement between the Parties in respect of the subject matter of the agreement. In the event of any conflict or inconsistency between the Terms and the Quotation then the Quotation will prevail.
- b) The Parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement.

13.5 Waiver

- a) No failure or delay by the Supplier in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

13.6 Agency, partnership etc

- a) This agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this agreement.
- b) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

13.7 Further assistance

Each Party to this agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this agreement or to make it easier to enforce.

13.8 Severance

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way effect any other circumstances of or the validity or enforcement of this agreement.

13.9 Notices

A notice or other communication connected with this agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the

notice may be sent by pre-paid post to the address of the addressee as set out in this agreement, or sent by email or fax to the email or fax number of the addressee.

13.10 Work, health and safety

The Supplier must comply with all relevant work, health, safety and welfare standards and regulations determined by the Client or as prescribed by legislation.

13.11 Inconsistency – Terms and Quotations

If there is an inconsistency between any provision of these Terms and the provisions of the Quotation then the provisions of the Quotation shall prevail.

13.12 Law and jurisdiction

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.