

**Bartlett Concrete Placing Limited**  
**Terms and Conditions of Trade – Goods and Services**

**1. Definitions**

In these terms of trade:

"Account" means the Customer's account with the Vendor.

"Customer" means the person or entity making the application or any person acting with ostensible authority on behalf of the Customer.

"Goods" means goods supplied by the Vendor to the Customer at any time.

"Guarantor" means, any party executing a Guarantee of the Customer's Account with the Vendor.

"Order" or "Orders" means the order or orders of the Customer to the Vendor to supply Goods and Services. "PPSA" means the Personal Property Securities Act 1999.

"Services" means services supplied by the Vendor to the Customer at any time.

"Vendor" means Bartlett Concrete Placing Limited.

**2. Orders**

Orders will be on such forms as the Vendor may require from time to time.

**3. Acceptance**

Each Order shall constitute acceptance by the Customer of these Terms and Conditions of Trade.

**4. Prices**

Prices are subject to change without notice. All Orders will be charged at prices prevailing at the date of delivery of the Goods and Services.

**5. Delivery & Access**

The Customer acknowledges & agrees:

- (a) the Vendor accepts no duty or responsibility for delivery but may elect to arrange delivery at its discretion without any liability and at the Customer's costs and responsibility in all things
- (b) the Vendor elect to charge for any delivery
- (c) it shall be deemed to have accepted delivery and liability for Goods immediately the Vendor notifies the Customer that any Goods are ready for collection or they are placed with a carrier or delivered to the Customer's business premises or site whether attended or not
- (d) a certificate purporting to be signed by an officer of the Vendor confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket
- (e) the Vendor shall not be liable for delay failure or inability to deliver any Goods or perform any Services
- (f) once notified that Goods are ready for collection or delivery the Customer agrees to pay all costs of the Vendors in holding Goods
- (g) it shall provide reasonable and proper access to any site specified for delivery and Council approved crossing facilities
- (h) to pay all costs and expenses arising from frustrated or delays in delivery
- (i) to pay all damages or claims arising in the course of or after delivery whether to footpaths or any other property and including any fine or penalty and/or local authority claim to clean-up roads made dirty on departure
- (j) the Vendor may delay, cancel or suspend any delivery for any period or cancel any part of any agreement for sale without liability to anyone.

**6. Limitation of liability**

The Customer acknowledges & agrees:

- (a) the Vendor's liability to the Customer shall be limited to the value of the Order supplied.
- (b) the Vendor shall not be liable for any claim loss or expense arising which is made after 14 days from date of delivery of Goods or Services (or at all once Goods have been unpacked, on-sold or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance.
- (c) the Vendor will not be liable for any contingent, consequential, direct, indirect, special, or punitive damage arising whether due to negligence or otherwise & the Customer acknowledges this express limit of liability & agrees to limit any claim accordingly.
- (d) No other term, condition, agreement, warranty, representation or understanding whether express or implied other than these Terms, is made or given by the Vendor.
- (e) it shall Indemnify the Vendor against all claims and loss of any kind however caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Goods and Services

**7. Health and Safety in Employment Act 1992**

The Vendor shall be responsible for the actions of its employees in terms of section 15 of the Health and Safety in Employment Act 1992 ("HSEA"). The Customer shall be responsible for compliance with the HSEA in respect of the Customer's site and shall advise the Vendor prior to commencement of any work of any hazards on the Customer's site.

**8. Time for Performances**

Time shall in no case be of the essence in respect of the delivery of Goods or the provision of Services. The Vendor shall not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer shall not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase. Delivery of Goods by the Vendor to a carrier is deemed to be delivery to the Customer.

**9. Terms of Payment**

- (a) Unless otherwise specified, payment for all Goods and Services shall be made:
  - (i) Within 14 days of date of invoice;
  - (ii) Progress Payments claimed under the Construction Contracts Act 2002 shall be made no later than 14 days after a payment claim is served on the Customer.
- (b) The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order.
- (c) An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.
- (d) Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a day by day basis until payment is made in full.
- (e) All costs of or incurred by the Vendor as a result of a default by the Customer including but not limited to administration charges, debt collections costs and legal costs as between solicitor and client shall be payable by the Customer.
- (f) If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

**10. Quotation**

Where a quotation is given by the Vendor for the supply of Goods and Services:

- (a) unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
- (b) the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
- (c) the Vendor reserves the right to alter the quotation because of circumstances beyond its control.

**11. Taxes and Duties**

Unless expressly included in any quotation given by the Vendor, Goods and Services Tax and other taxes and duties in connection with the supply of the Goods and Services to the Customer are not included in the price and shall be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price shall be increased by the amount of such taxes or duties.

**12. Risk**

From the time of dispatch to the Customer by the Vendor, risk in all Goods supplied shall pass to the Customer and any damage or deterioration to the Goods shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

**13. Ownership/General Lien**

- (a) The Vendor shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.
- (b) If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
- (c) The Vendor shall have a right to stop and retrieve the Goods in transit whether or not ownership has passed.

**14. Export Prohibition**

- (a) The Goods provided pursuant to these Terms and Conditions of Trade are sold for use in New Zealand only and are not to be exported elsewhere, directly or indirectly, without prior agreement of the Vendor.
- (b) In the event that the Vendor consents to the export of the Goods the Customer is responsible for all costs and compliance with any export regulations in force within the country for which the Goods are destined.

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**15. Recovery of Goods**

- (a) In addition to the Vendor's rights at law, equity and by virtue of s109 of the PPSA, in the event of non-payment or where the Customer's account is delinquent, the Customer gives irrevocable authority to the Vendor to enter at any time and without notice any land or premises occupied by the Customer, or any land or premises where the Vendor believes the Goods to be, to inspect, take possession of, and/or remove the Goods or any part thereof.
- (b) The Vendor shall not be liable for any damage, expense, claim, or other losses incurred by the Customer as a result of the action taken at 19(a) and the Customer shall fully indemnify the Vendor against and all claims, costs, and demands from third parties so arising.

**16. Warranties**

- (a) Unless otherwise specified, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods and Services.
- (b) Where applicable, manufacturer's warranties will attach to the Goods.
- (c) Where the Consumer Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants to the Vendor that any Goods and Services supplied by the Vendor under any order with the Vendor are being acquired by the Customer for the purpose of its business and the Consumer Guarantees Act 1993 does not apply to the supply of those Goods and Services.
- (d) Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order, the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if a claim is made by the Customer within seven days of delivery of the Goods time being of the essence.

**17. Cancellation**

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

**18. Returns**

The Customer shall not be entitled to return Goods or cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

**19. Personal Property Securities Act 1999**

- (a) The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor in all Goods and Services previously supplied by the Vendor to the Customer (if any) and all after acquired Goods and Services supplied by the Vendor to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant a "purchase money security interest" to the Vendor, as that term is defined in the PPSA.
- (b) The Customer agrees:
  - (i) It shall provide on demand and from time to time all information required to register a financing statement or financing change statement, and to maintain and enforce a perfected security interest in the Goods and Services supplied from time to time in accordance with the PPSA;
  - (ii) It shall on demand reimburse on an indemnity basis all costs incurred by the Vendor involved in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions of Trade including executing subordination agreements;
  - (iii) It shall not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;
  - (iv) To give the Vendor not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
  - (v) it shall be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and

(vi) it waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA upon enforcement.

- (c) Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- (d) To the maximum extent permitted by law, the Customer waives its rights and, with the Vendor's agreement, contracts out of its rights under sections referred to in sections 107(2), B(e) and (g) to (I) of the PPSA.
- (e) The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms, and, with the Vendor's agreement, contracts out of such sections.

**20. Security**

Without prejudice to such other rights as the Vendor may have pursuant to these Terms and Conditions of Trade, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure to the Vendor all sums due to the Vendor and may refuse to supply further Goods and Services to the Customer until such security is given.

**21. Copyright & Intellectual Property**

- (a) Unless it is specifically agreed in writing to the contrary, the Vendor retains all intellectual property rights, including copyright, patents, registered designs, and all protection of confidential information in respect of any Goods and Services provided by the Vendor for/to the Customer.
- (b) The Customer will immediately advise the Vendor of any alleged infringement by the Vendor of a third party's Intellectual property rights. The Customer will indemnify and hold harmless the Vendor against any losses, costs, actions or liabilities suffered or incurred as a consequence of such infringement or alleged infringement.
- (c) The Vendor owns and has copyright in all designs, specifications, documents, and software produced by the Vendor in connection with the Goods provided pursuant to these Terms and Conditions of Trade and the client may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by the Vendor.

**22. Construction Contracts Act 2002**

- (a) All Orders that fit within the meaning of a Construction Contract pursuant to section 5 of the Construction Contracts Act 2002 ("CCA") are subject to the CCA and this clause.
- (b) In providing the Services, should the Vendor encounter unforeseen or hidden problems or unsuitable conditions (including but not limited to problems underground, behind wall or roof space, under the floor, or worn, damaged or corroded fittings), the Vendor shall contact the Customer forthwith and provide the Customer with an estimate of further costs to complete the work. The Customer shall then have the option of accepting the further costs, or terminating the contract and paying to the Vendor all costs incurred to the date of termination.
- (c) The Customer acknowledges that the Vendor is entitled to progress payments in accordance with sections 16 and 17 of the CCA and will make payment on the due date for payment as defined in section 18 of the CCA.
- (d) The Vendor retains the right to claim under the CCA by submitting a Payment Claim as defined in the CCA, in writing, identifying the contract, identifying the item, the period to which it relates, the amount claimed, when it is due to be paid and detailing how the claim is calculated.
- (e) In the event of a dispute regarding the Payment Claim the parties shall resolve the matter using the binding fast track process in Part 3 of the CCA.

**23. Suitability of Goods and Services**

The Customer must satisfy itself that the Goods and Services as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Goods and Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods and Services whether singularly or in combination with other Goods and Services.

**24. Second Hand Goods**

Where the Vendor supplies the customer with second hand Goods the Customer acknowledges that the Customer has had full opportunity to inspect the same and accepts the second hand Goods with all faults. The Customer acknowledges that no

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warranty is given (unless recording in writing by the Vendor specifically granting a warranty in respect of the second hand Goods) as to the quality or suitability for any purpose of the second hand Goods. Any implied warranty, statutory or otherwise, is expressly excluded.

**25. Dimensions and Specifications**

- (a) Dimensions and specifications contained or referred to in any Order, catalogues, brochure or other publications maintained or issued by the Vendor are estimates only.
- (b) Unless otherwise expressly agreed in writing, it is not a condition of these Terms and Conditions of Trade or any Order that the Goods and Services will correspond precisely with such dimensions and specifications and customary tolerances or in the absence of customary tolerances, reasonable tolerances shall be allowed.

**26. Personal Guarantee of Company Directors or Trustees**

If the Customer is a Company or Trust, the Director(s) or Trustee(s) signing this contract, in consideration for the Vendor agreeing to supply Goods and Services and grant credit to the Customer at their request, must also sign this contract in their personal capacity and jointly and severally personally guarantee as principal debtors ("Guarantors") to the Vendor the payment of any and all moneys now or hereafter owed by the Customer to the Vendor. Any personal liability of a Guarantor shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in these Terms and Conditions of Trade. The Guarantors and the Customer shall be jointly and severally liable under these Terms and Conditions of Trade and for payment of all sums due hereunder.

**27. Assignment**

- (a) The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Vendor.
- (b) The Vendor is entitled at any time to assign to any other party all or any part of a debt which is owing to the Vendor.
- (c) The Vendor may also assign or sub-contract any part of the work which is to be performed under any contract.
- (d) In respect of any assignment by the Vendor pursuant to this clause, the Assignee shall be entitled to the full rights of the Vendor.

**28. Disputes**

- (a) In the event of any dispute arising between the Vendor and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- (b) In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- (c) Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

**29. Changes of General Terms and Conditions**

- (a) The Vendor may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- (b) The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- (c) Failure by the Vendor to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms and Conditions of Trade.
- (d) The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by this Agreement or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer fourteen days after the date of delivery of the notice.

**30. Force Majeure**

Neither the Vendor nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.

**31. Validity**

No terms & conditions sought to be imposed by the Customer upon the Vendor shall apply, unless otherwise agreed in writing.

**32. Severability**

Any part of these Terms may be severed without affecting any other part.

**33. Governing Law**

These Terms and Conditions of Trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.