

# Terms and Conditions of Trade

## 1. Definitions

- 1.1. “**TCSL**” shall mean Total Concrete Solutions Limited or any agents or employees hereof.
- 1.2. “**Client**” shall mean any person acting on behalf of and with the authority of the client or any person purchasing products and services from TCSL.
- 1.3. “**Price**” shall mean the cost of the Work as agreed between TCSL and the client and includes disbursements.
- 1.4. “**Work**” shall mean, without limitation the work carried out by TCSL.
- 1.5. Any instructions received by TCSL from the client for the supply of Work shall constitute a binding contract and acceptance of terms and conditions contained herein.

## 2. Quotation

- 2.1. TCSL may produce a quotation for the Client in relation to the Work (“the Quotation”). The Quotation shall be subject to the clarifications and exclusions set out in these terms and shall be valid for a period of 30 days.

## 3. Price

- 3.1. TCSL, in its sole discretion, may require the Client to pay a deposit.
- 3.2. Where no price is stated in writing or agreed to orally the Works shall be deemed to be sold at the current amount as shall Works are sold by TCSL at the time of the contract.
- 3.3. All variations or alterations to the scope of the supply of the Work shall be binding on the Client, including any adjustment to the Price. Any instructions to vary or alter the supply of the Work will be treated as a variation. Common examples of variations are:
  - 3.3.1. Additional m2 of concrete
  - 3.3.2. Additional earthworks
  - 3.3.3. Slot drains
  - 3.3.4. Changes to plans
  - 3.3.5. Inconsistencies between architect plans, engineer plans or framing plans
- 3.4. **Variation** costs may include (but are not limited to):
  - 3.4.1. Labour rates ranging from \$55 - \$85 per hour (labour includes admin time, emails and phone calls)
  - 3.4.2. Materials at cost plus 15%
  - 3.4.3. Delivery fees, travel expenses

## 4. Delays

- 4.1. Delays which prevent Work from being completed within a month of the start date (i.e. boxing date) will result in a part payment being required to cover the cost of materials and works already completed. Examples of common delays are:
  - 4.1.1. Council issues;

- 4.1.2. Changes to plans;
- 4.1.3. Weather constraints;
- 4.1.4. Delays from other subcontractors;
- 4.1.5. Inconsistencies between architect, engineer or framing plans

## 5. Payment

- 5.1. Payment for Work shall be made in full within 7 days from the date of the invoice (“the due date”).
- 5.2. Interest may be charged on any amount owing after the due date at the rate of 2.5% compounding monthly.
- 5.3. Any expenses, disbursements and legal costs incurred by TCSL in the enforcement of any rights contained in this contract shall be paid by the client including any reasonable solicitor’s fees or debt collection agency fees.
- 5.4. TCSL will provide the Client with a Record of Works once the invoice has been paid in full.

## 6. Security Interest

- 6.1. The client gives TCSL a security interest in all of the client’s present and after acquired Work or property that TCSL has performed services on or to or in which goods or materials supplied or financed by TCSL have been attached or incorporated.

## 7. Payment Allocation

- 7.1. TCSL may in its discretion allocate any payment received from the client towards any invoice and may do so at the time of receipt or at any time afterwards and on default by the client may allocate any payments previously received and allocated. In the absence of any payment allocation by TCSL, payment shall be deemed to be allocate in such manner as preserves the maximum value of TCSL’s interest in any products.

## 8. Disputes

- 8.1. In the event of a dispute or disagreement arising out of the contract between TCSL and the Client, either party may give written notice no later than 14 days following the event/s giving rise to the dispute, to the other party specifying the nature of the dispute or disagreement, the remedy sought and requiring that the dispute or disagreement be determined and settled in accordance with this clause.
- 8.2. On receipt of the notice, the parties shall each appoint a representative who has authority to determine the grievances or dispute, and those two representatives shall meet as soon as reasonable possible to see if they can determine the grievance. All discussions, meeting and correspondence between the two representatives shall be deemed without prejudice and without concession of liability and shall not be used by either party in any later proceedings unless both parties agree or agreement is reached by one party fails to honour the agreement.

- 8.3. If the two parties cannot reach agreement within 30 days of being appointed, either party may refer the dispute to mediation.

## **9. Defects**

- 9.1. Any dispute as to the quality of the Work used or workmanship must be notified to TCSL in writing within seven (7) days of that defect becoming known to the client.
- 9.2. TCSL shall at its own cost rectify any defects in the Work caused by TCSL which are notified within seven (7) days. Do not attempt to rectify defects yourself or instruct others to do so.

## **10. Liability**

- 10.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations on TCSL which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, condition or terms imposed on TCSL, TCSL's liability shall where it is allowed be excluded or if it is not able to be excluded only apply the minimum extent required by the relevant statute.
- 10.2. Except as otherwise provided by law TCSL shall not be liable for:
- 10.2.1. Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the client or any other person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Work provided by TCSL to the client; and
- 10.2.2. The client shall indemnify TCSL against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing whether caused or arising as a result of the negligence of TCSL or otherwise brought by any person in connection with any matter, act, omission or error by TCSL its agents or employees in connection with the Work.

## **11. Consumer Guarantees Act**

- 11.1. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the client acquires Works from TCSL for the purposes of a business in terms of section 2 and 43 of that Act.

## **12. Personal Guarantee of Company Directors or Trustees**

- 12.1. If the client is a company or trust the directors or trustees signing this contract, in consideration for TCSL agreeing to supply products and grant credit to the client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principle debtors to TCSL the payment of any and all monies now or hereafter owed by the client to TCSL and indemnify TCSL against non-payment by the client. Any personal liability of a signatory hereto shall not exclude the client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories

and the client shall be jointly and severally liable under the terms and conditions of this contract for the payment of all sums due hereunder.

### **13. Cancellation**

- 13.1. TCSL shall without any liability and without prejudice to any other right it has in law or equity have the right by notice to suspend or cancel in whole or in part any contract for the supply of Work to the client if the client fails to pay any money owing after the due date or the client commits an act of bankruptcy as defined in the current legislation relating to such matters.
- 13.2. Any cancellation or suspension of this agreement shall not affect TCSL's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the client's obligations to TCSL under this contract.

### **14. Miscellaneous**

- 14.1. TCSL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control. This includes delays due to delivery deadlines being missed and acts of terrorism.
- 14.2. Failure by TCSL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations of TCSL under this contract.
- 14.3. If any provision of this contract is found to be invalid, void or illegal or unenforceable, the validity existence legality and enforceability of the remaining provisions shall not be affected prejudiced or impaired.
- 14.4. This contract shall be governed in accordance with the applicable law of New Zealand.