

**Bartlett Concrete Placing Limited
Purchase Order Terms and Conditions**

1. Entire Agreement

- 1.1. This Agreement evidences the entire agreement between the Supplier and BCP in connection with the Goods and/or Services and supersedes and extinguishes all prior agreements (including any quotes or terms provided by the Supplier) between the Supplier and BCP with respect to the supply of the Goods and performance of the Services.
- 1.2. All Goods and/or Services provided by the Supplier to BCP are supplied under these Purchase Order Terms and Conditions ("PO Terms") unless a separate written contract is signed by BCP and the Supplier which expressly excludes these PO Terms.
- 1.3. By accepting a Purchase Order from BCP, whether in writing, orally or by performance, the Supplier agrees that the Goods and/or Services will be provided under these PO Terms.
- 1.4. A notification to BCP that a Supplier accepts a Purchase Order subject to additional or amended terms is not valid unless agreed in writing by BCP. BCP will not be bound by additional or amended terms unless it has agreed to them in writing, and may accept a supply of Goods and/or Services without being bound by any additional or amended terms it has been notified of, but has not agreed to in writing.
- 1.5. In the event of inconsistency, the order of precedence of the documents comprising the Agreement shall be as follows:
 - (a) the Purchase Order;
 - (b) these Purchase Order Terms and Conditions;
 - (c) the Specifications; and
 - (d) any other document attached to or referred to in the Purchase Order.

2. Price

- 2.1. Except as expressly provided in the Purchase Order, the Price:
 - (a) is the amount set out in the Purchase Order (if no price is specified in the Purchase Order, then the Supplier must confirm the price with BCP prior to commencing. BCP will not be bound to pay unless the price or a mechanism to determine the price has been agreed in writing before the Goods and/or Services are supplied);
 - (b) allows to provide for everything necessary to supply the Goods and/or Services to meet the Specifications, including all testing, labour, supervision, plant, material and site attendances which may be required;
 - (c) allows for items not expressly stated but reasonably inferred as necessary for the satisfactory delivery of the Goods and/or completion of the Services;
 - (d) is fixed and will not be subject to adjustment for rise and fall, or any changes in general or market specific economic conditions;
 - (e) includes all taxes, duties, levies and fees (including GST) which are payable in relation to the supply and delivery of the Goods and performance of the Services. The Supplier must pay such taxes, duties, levies and fees;
 - (f) will not be varied for any reason, except where expressly agreed in writing, signed by an authorised representative of BCP.

3. Payment

- 3.1. The Supplier will provide BCP with a valid tax invoice setting out the amounts payable by BCP to the Supplier for the Goods and/or Services together with GST.
- 3.2. The Suppliers invoice must:
 - (a) be typewritten (not handwritten);
 - (b) be sent by email to accounts@bcpltd.co.nz and cc'd to any other BCP email address recorded on the Purchase Order;
 - (c) include the Suppliers GST number and any other information necessary for a valid GST invoice;
 - (d) include the relevant Purchaser Order number;
 - (e) include a description of the Goods and Services supplied and any relevant supply dates; and

- (f) show the total amount payable by BCP, with details of how this amount has been derived.
- 3.3. The Supplier acknowledges that payment may be delayed if the above requirements are not followed by the Supplier. Any invoices received which do not comply will **not** be processed for payment and will be returned to the Supplier for resolution and re-submittal.
- 3.4. Subject to compliance with these PO Terms, and subject to clauses 3.5 and 3.6, the Supplier's invoice for the Goods and/or Services will be paid by BCP on the final Working Day of the month following the:
 - (a) date recorded on the invoice, or
 - (b) the date the invoice was **received** by BCP,whichever is the latter.
- 3.5. If any part of an invoice or the Delivery of the Goods and/or Services is disputed by BCP, BCP may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved in accordance with clause 10.
- 3.6. BCP, without waiver or limitation of any rights or remedies it has, shall be entitled from time to time to set off against the Price any amounts lawfully due from the Supplier to BCP whether under this Purchase Order or otherwise.

4. Delivery of Goods

- 4.1. The Supplier must have a valid Purchase Order Number before supplying Goods and/or Services. Goods or Services supplied against an invalid Purchaser Order Number or without a Purchase Order Number may be returned at the Supplier's expense, including the cost of packing, transporting, insuring and handling of the rejected Goods.
- 4.2. If the Supplier is responsible for Delivery under the Purchase Order:
 - (a) the Supplier must Deliver the Goods to the Place of Delivery no later than the time specified in the Purchase Order or, if no time is specified in the Purchase Order, within a reasonable time of the date of the Purchase Order. Time will be of the essence.
 - (b) the cost of delivering the Goods to the Place of Delivery (including all transport costs and insurance cover), and all packing, loading and unloading is included in the Price for the Goods.
 - (c) the Supplier must comply with all safety requirements of BCP relating to the Suppliers conduct at the Place of Delivery.
- 4.3. If the Supplier is responsible for making the Goods available for collection at the Place of Pick-up, the Supplier must make the goods available for BCP to collect at the Place of Pick-up by the Delivery Date.
- 4.4. The Supplier will be in breach of this Agreement if:
 - (a) the Goods are not delivered to the Place of Delivery by the Delivery Date; or
 - (b) the Goods are not made available for collection at the Place of Pick-up by the Delivery Date; or
 - (c) the Services are not completed by the Date for Completion;
- 4.5. If the Supplier is in breach of this Agreement under clause 4.4, then:
 - (a) the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Order, from the Delivery Date or the Date for Completion until the Goods are delivered or the Services are completed;
 - (b) where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable for all loss, cost, expense and damage suffered by BCP arising out of or in connection with such breach; and
 - (c) BCP may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).
- 4.6. Goods may not be delivered in part unless otherwise agreed in writing by BCP.

5. Rejection

- 5.1. BCP is not obliged to accept early Delivery of the Goods. If BCP does not accept early delivery of the Goods, the Supplier must, at its cost,

hold the Goods in storage until the Delivery Date. BCP is not obliged to accept any Goods in excess of the quantity specified in the Purchase Order.

- 5.2. BCP may, by providing written notice to the Supplier within 10 Working Days of receipt of the relevant Goods, reject any Goods which it reasonably considers are defective in any way or where the warranties in clause 7 have not been complied with or where no Purchase Order exists or an invalid Purchase Order was used by the Supplier.
- 5.3. All Goods rejected pursuant to this clause 5 must be removed from BCP's premises by the Supplier within 2 Working Days of BCP notifying the Supplier of its intention to reject the Goods and the location from which the Supplier shall collect the rejected Goods.

6. Title and Risk

- 6.1. The Supplier warrants that it has unencumbered ownership of, and title to, the Goods and any goods comprised in the Services, and that the same are free of any liens, charges or encumbrances.
- 6.2. Unencumbered title and risk in the Goods and any goods comprised in the Services will pass to BCP on Delivery of the Goods or performance of the Services.
- 6.3. Unless expressly agreed otherwise in writing, the Supplier will not register a security interest in the Goods.

7. Warranties

- 7.1. In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to BCP and to any subsequent purchaser of the Goods and/or Services that, when the Goods are delivered, and on completion of the Services, they will:
- (a) be fit for their ordinary purpose, as well as any specific purposes BCP has notified the Supplier of;
 - (b) be of merchantable quality, new in every respect and in good order and condition;
 - (c) conform to the Purchase Order in all respects, including complying with all of the applicable Specifications or other requirements included;
 - (d) comply with all applicable New Zealand Standards, or where there are no applicable New Zealand Standards, then they will comply with best industry practice;
 - (e) not infringe the Intellectual Property rights of any third party;
 - (f) comply with the provisions of any law or legislation applicable to them;
 - (g) be carried out with reasonable care, diligence, and skill and performed by persons with the requisite skill and experience;
 - (h) be free from defects for the longer of:
 - (i) 2 years from the date the Goods are put into service, or the Services are completed; or
 - (ii) the period specified in the Purchase Order.
- 7.2. The Supplier will promptly remedy any breach of the warranties contained in clause 7.1 to BCP's reasonable satisfaction. If requested by BCP, the Supplier shall replace, repair or upgrade any faulty Goods and re-perform the Services and provide a temporary solution while the breach is being remedied.
- 7.3. The Supplier will, to the greatest extent possible, pass onto BCP the benefit of any warranty or other assurance from any other person in respect of the Goods or Services supplied to the intent that BCP may have recourse against those other persons through the Supplier.
- 7.4. This clause 7 survives completion and/or termination of the Agreement.

8. Liability and Indemnity

- 8.1. The Supplier acknowledges that to the maximum extent permitted by law:
- (a) The Supplier indemnifies BCP against any action, liability, costs, damages or expenses, including solicitor and own client costs, suffered or incurred by BCP in connection with any breach by the Supplier of any term of the Agreement or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents.

- (b) in the event BCP is found to be liable to the Supplier under or in connection with this Agreement, BCP's liability shall be limited to the purchase price of the relevant Goods or Services.
- 8.2. The indemnity shall survive the termination of this Agreement.

9. Suspension, Default and Termination

- 9.1. BCP may suspend all or part of the supply of the Goods or performance of the Services at any time for any period of time by giving notice to the Supplier. The Supplier must comply with the notice and recommence supply when notified by BCP. The Supplier will not be entitled to any additional payment arising as a result of the suspension.
- 9.2. Either party may terminate this Agreement forthwith by written notice to the other if:
- (a) that other party commits any continuing or material breach of any of the provisions of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy the breach within 10 Working Days after receipt of a written notice of the breach and requiring it to be remedied; or
 - (b) that other party is in breach of clause 4 or clause 11; or
 - (c) that other party suffers an Insolvency Event; or
 - (d) that other party ceases, or threatens to cease, to carry on business.
- 9.3. BCP may terminate a Purchase Order at any time and for any reason by giving written notice to the Supplier. Following any such notice the Supplier must, to the extent specified by BCP, stop all work under the Purchase Order. Any costs for any such termination of the Purchase Order will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event shall reimbursement include for anticipated profits or undelivered Goods or Services.
- 9.4. Termination of a Purchase Order will be without prejudice to the rights of a party against the other party accrued prior to such termination, such rights being intended to survive the termination.

10. Disputes

- 10.1. If either party notifies the other in writing of any dispute relating to this Agreement or a Purchase Order (including its breach, validity or termination), the parties must endeavour to resolve the dispute in good faith by consultation and negotiation or by using appropriate dispute resolution techniques.
- 10.2. If any dispute cannot be resolved in accordance with clause 10.1 within 10 Working Days, either party shall be entitled to refer the dispute to arbitration in accordance with the provisions of the Arbitration Act 1996. The arbitrator shall be agreed between the parties within 5 Working Days of written notice of referral by the referring party. If the parties cannot agree on the arbitrator, then either party may request the appointment of an arbitrator nominated by the Registrar of the Building Disputes Tribunal (NZ) Limited.
- 10.3. If any dispute arises between BCP and the Supplier relating to this Agreement and BCP makes a claim against the Principal or Head Contractor relating to the same matter, or a similar or related matter, then the parties agree:
- (a) To consolidate their dispute; and
 - (b) To provide each other with all reasonable assistance in the resolution of the dispute and make available all relevant information within either party's possession or control to assist with resolution of the dispute; and
 - (c) To attempt to resolve the dispute with due diligence.
- 10.4. Disputes may otherwise be dealt with by adjudication as provided for in the Construction Contracts Act 2002.
- 10.5. Nothing in this Agreement will preclude a party from seeking urgent interlocutory relief before a court.
- 10.6. In the event of and during any unresolved dispute the Supplier must ensure the continued progress of performing its obligations under the Agreement.

11. Health and Safety

- 11.1. The Supplier must maintain safe and healthy working practices and conditions and must promptly comply with all reasonable health and safety requirements and/or instructions provided by BCP. The Supplier must always comply with all applicable health and safety statutes and regulations, including, at the minimum:

- (a) the Health and Safety at Work Act 2015, including any revisions, amendments or replacement legislation;
- (b) BCP's health and safety policy and procedures;
- (c) Good Industry Practice; and
- (d) all health and safety requirements under the Head Contract which BCP has notified the Supplier in writing of.

11.2.If BCP reasonably requires, the Supplier must submit a site-specific safety plan and/or other health and safety documentation to **BCP**.

11.3.If any health and safety requirements are not complied with, BCP may, following 2-hours notice, take any necessary action to remediate the matter. The Supplier will be liable for all of BCP's costs and losses resulting from the Supplier's non-compliance with health and safety requirements.

12. Insurance

12.1.Except as otherwise provided on the Purchase Order, the Supplier must procure and maintain, until the completion or termination of the Purchase Order, the following insurances as a minimum:

- (a) Public liability insurance with a minimum of \$10,000,000 cover.
- (b) Motor vehicle insurance with a minimum of \$10,000,000 cover.
- (c) Professional indemnity insurance (where applicable) with a sum insured of not less than \$5,000,000. The Supplier must maintain their professional indemnity insurance cover for a minimum of 6 years post completion or termination of the Purchase Order.

12.2.Prior to delivering the Goods or providing the Services, and at any time upon request by BCP, the Supplier must provide evidence that all insurances required are current.

13. Intellectual Property

13.1.All intellectual property rights owned by a party prior to, or independent of, a Purchase Order will remain owned by that party.

13.2.All intellectual property rights created in the course of supplying the Goods and/or Services will be owned by BCP. The Supplier must execute all documents and take all other actions reasonably required by BCP to give effect to this clause.

14. Documentation

14.1.The Supplier must provide the warranties, guarantees, continuity guarantees, and any other documentation required by the Purchase Order. These documents (which BCP will provide) must be returned properly executed prior to commencing work under a Purchase Order, unless otherwise agreed in writing by BCP. The Supplier acknowledges and agrees that it is not entitled to any payments in relation to the Purchase Order until these properly executed documents are provided to BCP.

14.2.The Supplier must keep full records and documentation in relation to the Goods and/or Services provided and provide copies of those records to BCP on reasonable request.

15. Confidentiality

15.1.Without the prior written consent of BCP, the Purchase Order must be treated as Confidential Information.

15.2.The Supplier must not disclose any Confidential Information related to BCP, the Agreement or the Goods or Services except to the extent necessary for the Supplier to carry out its obligations under this Agreement, enforce any of its rights under it, or where disclosure is required by law. This obligation survives termination and expiry of the Agreement.

16. Miscellaneous

Force Majeure

16.1.Neither party will be liable to the other for any delays or non-performance of contractual obligations under this Agreement caused by a Force Majeure event, provided the affected party has:

- (a) notified the other party in writing within 5 Working Days of the commencement of the event, and
- (b) taken all reasonable steps to minimise any loss, damage or delay resulting from the Force Majeure event.

Revisions

16.2.BCP may from time-to-time update or revise these PO Terms by posting the revised PO Terms on BCP's website at www.bcpltd.co.nz.

16.3.The newly updated PO Terms will take immediate effect in respect of all future Purchase Orders which have not already commenced at the date of the update or revision.

16.4.Unless the parties agree otherwise in writing, the revised PO Terms will not apply to any work which is being completed under an existing Purchase Order. The PO Terms which had applied to that Purchase Order will continue to apply.

Notices

16.5.Any notice to be given under the Agreement must be in writing and must be delivered or sent by email to the other party's address for notices as set out in the Purchase Order.

Relationship

16.6.Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties. The Supplier is an independent contractor and not an employee or agent of BCP.

16.7.BCP's relationship with the Supplier is not exclusive. BCP may appoint any other third-party to provide goods or services identical, or similar to, the Goods and/or Services.

Assignment

16.8.The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Agreement without the prior written consent of BCP. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause.

16.9.Where BCP consents to the Supplier assigning, subcontracting or transferring any of its obligations under, or aspect of, this Agreement to a third party, the Supplier will remain fully responsible for all obligations to BCP under the Agreement.

No Waiver

16.10. Any failure or delay in enforcing compliance with any term of this Agreement shall not be a waiver of that or any other term of this Agreement. No waiver of any terms of this Agreement will be binding unless set out in writing, expressed to amend this Agreement and signed by all the parties.

Severance

16.11. This Agreement shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

16.12. If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid or unenforceable the remaining provisions, or the remainder of the provision concerned, shall continue in effect.

17. Definitions

"Agreement" means the Purchase Order, these PO Terms, the Specifications and any other document attached to or referred to in the Purchase Order.

"BCP" means Bartlett Concrete Placing Limited.

"Confidential Information" includes the Agreement, information noted by BCP to the Supplier as being confidential, and information that would reasonably be considered confidential, except information that is already public knowledge.

"Date for Completion" means the date specified in the Purchase Order as the date by which the Supplier must perform and complete the Services.

“Date of Completion” means the date the Services are completed.

“Date of Delivery” means the date the Goods are delivered.

“Delivery” means the delivery of the Goods in good order to the Place of Delivery specified in the Purchase Order, or making the Goods available for pick-up by BCP at the Place of Pick-up specified in the Purchase Order (as applicable).

“Delivery Date” means the date specified in the Purchase Order by which the Supplier must deliver the Goods to the Place of Delivery or make the Goods available for pick-up by BCP at the Place of Pick-up (as applicable).

“Goods” means all goods identified in the Purchase Order and all component parts, manuals of those goods to be provided by the Supplier to BCP.

“Good Industry Practice” means the good practice (such as quality, productivity and performance) for that type of activity or service adopted by suppliers in the relevant New Zealand industry.

“Head Contract” means the head contract stated in the Purchase Order.

“Insolvency Event” means, in relation to a party, where that party becomes insolvent, files or has filed against it a petition in bankruptcy, makes an assignment for the benefit of creditors, enters receivership or liquidation, or suffers an analogous event.

“Place of Delivery” means the place specified as such by BCP in the Purchase Order.

“Place of Pick-up” means the place specified as such by BCP in the Purchase Order.

“PO Terms” means these Purchase Order Terms and Conditions.

“Purchase Order” means the Purchase Order submitted by BCP to the Supplier to deliver Goods and/or provide Services.

“Purchase Order Number” means the number set out in the relevant Purchase Order.

“Services” means all the services described in the Purchase Order and any goods and services incidental to the performance of those services or which can be reasonably inferred to be included from the description of the Services in the Purchase Order.

“Supplier” means the party identified as such in the Purchase Order.

“Working Day” means a day of the week other than Saturday, Sunday, days identified as public holidays under the Holidays Act 2003 or a day in the period commencing on (and including) the 24th day of December in any year and ending on (and including) the 5th day of January in the following year.