

Terms and Conditions

Definitions

1. Blundell Concrete Limited ("Blundell") means the company, its employees, agents and subcontractors and includes any Related Company in accordance with the meaning in the Companies Act 1993. Blundell may be referred to as "we", "us", "our", "ourselves".
2. Contract means the credit application form, the terms, the estimate and/or quote, any written amendment to the Price and/or Scope of Works produced by Blundell and the invoice.
3. Customer means the entity indicated by circling the entity and/or completion of the appropriate section in the credit application form as the customer together with its successors). If the Customer comprises more than one person, each of those person's liability and agreement is joint and several. Where the Customer is a trust, the trustees' liability shall not be limited to the assets of the trust. The Customer may be referred to as "you" and "your". The Customer includes all guarantors.
4. Delivery means the occurrence of the events in clause 42 herein.
5. Event of default means:
 - (a) where the Customer fails to pay, or in Blundell's opinion is likely to fail to pay, any moneys owing when due; or
 - (b) where the Customer breaches, or in Blundell's opinion is likely to breach, any non-monetary obligations owing to Blundell whether under these Terms or otherwise; or
 - (c) the Customer commits an act of bankruptcy;
 - (d) or the Customer's ownership or effective control is transferred without Blundell's consent; or
 - (e) if the Customer:
 - (i) becomes insolvent or is unable to pay its debts as they fall due or is deemed or presumed to be so under any law;
 - (ii) makes or proposes to make an assignment, arrangement, composition or compromise with, for the benefit of, or affecting its creditors in relation to any of its indebtedness; or
 - (iii) a receiver, liquidator, trustee, manager, administrator or statutory or official manager or similar officer is or has been appointed in respect of the Customer or over all or any of the Customer's assets.
6. Price means the total price provided in an estimate/quote and any amendment produced by Blundell to the estimate/quote and in the invoices. In the event of conflict, the Price shall be as set out in the invoices.

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- 7 Works means the scope and details of products and services provided by Blundell to the Customer as described in the estimate and/or quote, any written amendment produced by Blundell to the estimate and/or the quote and the invoices. In the event of conflict, the Works shall be as described in the invoices.

General

- 8 Headings do not form part of the terms and are for convenience only. References to any statutory provisions include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it.
- 9 If there is any inconsistency between the documents constituting the Contract then the following is the order of precedence:
- (a) Invoice
 - (b) Quote
 - (c) Estimate
 - (d) Written amendment by Blundell
 - (e) Credit Application Form
 - (f) Terms
- 10 Unless otherwise stated by Blundell all contracts are Construction Contracts for the purposes of the Construction Contracts Act 2002 ("the Act").
- 11 The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of the Contract created by these Terms. Blundell may at any time assign or transfer to any other person (including without limitation to a Related Company, whether or not acting as a security agent or security trustee of the security created under these Terms) all or any part of its rights, remedies and obligations under these Terms and any related or ancillary document without the Customer's consent.
- 12 Each provision of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.
- 13 No delay or failure to act is a waiver. No waiver is effective unless it is in writing. Any waiver of a breach so given is not a waiver of any other breach.
- 14 Blundell is not liable for any failure or delay in performing an obligation Terms if it is due to a cause reasonably beyond its control.
- 15 These terms and each and any security interest created under it will not be discharged, nor will the obligations of the customer be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer or another person.

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- 16** Blundell Concrete is not liable for payment of Building Consents, Permits, Engineering reports, or Geotech reports, these are at customers and home owners cost. All Road Crossing Permits or Council Inspections are to be applied for and paid by customer or home owner. All reports such as Engineer's, EQC, Permits, and Council approved plans Blundell Concrete must receive copies before a quotation can be completed.
- (a) Vehicle Crossing** were soil and grass seed required for berm of vehicle crossing this will be up to the customer and home owner to complete before final inspection. (Blundell Concrete does not quote for this work)
- 17** Any notice or other communication to the Customer may be served by delivery at the Customer's email or physical address, any other address specified by the Customer from time to time for such purposes or the Customer's usual residential address (if an individual) or otherwise the Customer's principal place of business or registered office.
- 18** These Terms will be governed by the laws of New Zealand. The Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.
- 19** The illegality, invalidity or unenforceability of a provision of these Terms will not affect the legality, validity or enforceability of another provision.
- 20** The Customer is not entitled to set-off against or deduct from the price due, any sums owed or claimed to be owed to you by us.
- 21** No variation to products, services and/or price claimed by the Customer shall be binding on Blundell unless it is agreed in writing.
- 22** Blundell may from time to time vary these Terms by advising the Customer of such variations in writing. Products and/or services ordered by the Customer after notification of such variations will be deemed to be an acceptance of such varied Terms.

Privacy Act

- 23** You and the guarantor(s) authorise us to collect, retain and use information relating to this Contract for any purpose connected with its business, including (but not limited to) debt recovery, credit reporting or assessment and to register any security interest, including collecting information from, and disclosing information to external [credit reporting agencies), debt collection agencies, trade referees and other third parties. [Information disclosed by Blundell to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services.] Under the Privacy Act 1993 individuals have rights of access to and request correction of their personal information by contacting Blundell.
- 24** The Customer, any director signing on behalf of the Customer and any guarantor authorises Blundell to collect, hold and use information from any person or entity for any of

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the above purposes, and for such person or entity to disclose information to Blundell and the Customer further authorises Blundell to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from Blundell.

Price

- 25 We may provide a quote or estimate of the price to you for the services and products you require. The quote or estimate is subject to adjustment by us in accordance with any change in the scope of work, additional work, additional equipment, additional time required or increase in costs to us for the products and services.
- 26 We will endeavour to record any such adjustments in writing to you. Any failure to do so does not relieve the Customer of the obligation to pay for any such adjustments.
- 27 The Customer is bound by any such adjustments to scope and/or price unless disputed with us in writing before the work is commenced.
- 28 The quote, estimate and/or Price shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 29 The Price payable for the services and products provided to you is the sum invoiced to you by Blundell. For the avoidance of doubt, regardless of the amount of any quote or estimate and/or any adjustment to the same, and/or the failure to state/agree a Price for the Works, the price payable for the services and products provided to you is the sum invoiced to you by Blundell.
- 30 All quotations, estimates and pricing, unless expressly stated in writing otherwise, are deemed to be estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production, installation and/or delivery of the products will be added to the price payable by the Customer.
- 31 Quotes and estimates if given may be subject to such further terms as are expressly set out in the quote or estimate.
- 32 If a Customer requires a variation to an order (including for any changes in quantities, measurements or specifications or nature of the services required or as a result of any inaccuracies or misstatements in the information supplied to Blundell) the Customer acknowledges such variation may result in a delay in delivery of the product and/or services and/or an increase in any estimate or quote given and the price payable.

Payment

- 33 We require payment of a deposit of 30% of the quote or estimate prior to the commencement of the supply of products or services.

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- 34 Blundell may invoice the customer for the products and services it provides by way of instalment invoices during and before the completion of the works.
- 35 Payment for products and services shall be made in full on or before the 7th day following the date of the invoice (“the due date”).
- 36 Interest at 5% per annum calculated on a daily basis may be charged on any amount owing from the date the amount was due for payment until the date of payment.
- 37 Such interest shall accrue on any unpaid sums at such a rate after as well as before any judgment.
- 38 If you default on payment of any invoice when due, you agree to indemnify us from and against all costs of collection and disbursements including legal fees on a solicitor/client basis.
- 39 Payment must be made through either of the following methods:
- a Cash
 - b Cheque
 - c Bank Cheque
 - d Direct Credit
 - e Any other method agreed to between you and us.
- 40 We reserve the right to invoice by way of a payment claim under the Act any time prior to the completion of the contract. If a payment claim under the Act is issued a payment schedule is due seven days after the date of the payment claim.
- 41 Any form of payment received by us, other than cash, shall not be deemed to be payment unless and until that payment has been honoured, cleared and recognised by us.
- 42 We may at our discretion allocate any payment (including a deposit) received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. On any default by you, we may re-allocate any payments previously received and allocate it.

Delivery

- 43 Unless otherwise agreed in writing Delivery of products will be deemed to have occurred upon the transfer of possession of the products to the Customer (or its representative, including a carrier) at Blundell’s premises, or where Blundell has agreed to deliver the products upon unloading of the products by Blundell at the curb side at the Customer's delivery address.
- 44 The cost of delivery will be borne by the Customer and will be included in the invoiced Price to be paid. Any carrier used for delivery shall be deemed to be an agent of the Customer. You will make all arrangements necessary to take delivery of the products.

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- 45 Delivery of products may be made by instalments.
- 46 Any items quoted for delivery are estimates only and Blundell will not be liable for any delay in delivery, whether or not beyond its control. Late or failed delivery does not entitle the Customer to cancel any order or part order or refuse to accept delivery and Blundell will not be liable for any loss suffered by the Customer.
- 47 If the Customer fails or refuses delivery of products at an agreed delivery time, the Customer is liable for all costs incurred by Blundell as a result of the refusal or delay in delivery.
- 48 The products shall be deemed accepted upon delivery unless the Customer notifies Blundell in writing of any defects, errors or discrepancies within seven days of delivery, provided Blundell is able to inspect the products to confirm the defect, error or discrepancy.
- 49 Risk in the products passes to the Customer on Delivery. Ownership in the products shall not pass to the Customer until the Customer has paid for the products and services in full and has fulfilled any and all other obligations under the contract.

Concrete Facts

- 50 Blundell Concrete will endeavour to take all reasonable measures to ensure the drying process of concrete occurs naturally. The Customer understands and acknowledges that causes of cracking, discolouration and imperfections will be unavoidable due to forces beyond its control. The Customer specifically acknowledges the following attributes of concrete and accepts Blundell shall have no liability in respect of them.

(a) Concrete

A natural product made of aggregates, sand, cement, iron oxide and water mixed together to make concrete. The mixing of cement and water starts a chemical reaction that gives off heat and is called hydration. Concrete is the only building product that turns up to site unmade, in a liquid or plastic state. We have only 1-2 hours to place and finish the concrete before it has become hardened for life. It is important to understand that each finished product will have its own unique characteristics and being a natural product, may have imperfections.

(b) Cracking

It is in concrete's nature to crack. Concrete shrinks as it dries and we can only endeavour to control cracking by implementing various procedures. These include thoroughly compacting the stone base, using reinforcing mesh and/or rebar in the concrete, placing expansion joint material where needed, pour at a reasonable slump and place timely expansion control saw cuts. All these processes will still not guarantee against random cracking in concrete which is caused by factors such as concrete supply, concrete mix quality/ingredient ratios and weather conditions.

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(c) Colour and Texture

You cannot expect the colour of the finished product to match any sample provided. Concrete colour and texture is affected by water oxide-cement ratios and temperature. These may vary between ready mix truck loads causing colour variations in different areas. Likewise, shaded areas will cause varying dry rates and colour differences in the finished concrete.

(d) Weather

It will be at Blundell Concrete's discretion not to pour due to bad weather ie rain, hail or storm, If the customer insists on the pour to go ahead a bad weather waiver must be signed by the customer.

Weather conditions during the laying and the curing process of concrete are critical to the final look of the product. Changes in weather conditions affecting temperature, humidity and wind speed throughout the day will impact on the final result and may cause increased cracking, imperfections and discolouration of concrete. Blundell Concrete will not be liable for unpredictable rainwater on a fresh pour can cause new concrete surfaces to become soft which in turn may decrease the strength of the concrete and increase the tendency for cracking to develop. Rain drops onto freshly poured concrete from surrounding structures can also result in imperfections in the finished look of concrete.

(e) Concrete Supply

Late supply of concrete is common in the industry and can mean that the batch quality/mix is compromised which may result in any or all of the abovementioned defects. Some aggregates are derived from riverbeds and often contain small pieces of driftwood and iron that may become visible on the surface of the finished concrete. This is not a defect with the product. Equipment failures in concrete pumps and finishing machinery are another consideration which may affect the placement and curing process and henceforth the final look of the concrete.

(f) Concrete Curing

Curing has a strong influence on the properties of hardened concrete and cannot be overemphasised. The correct curing will increase durability, strength, water tightness, abrasion resistance and volume stability of the finished concrete. Excessive loss of water by evaporation can delay or prevent adequate hydration, causing surface cracking in the concrete. It is important for water to be retained in the concrete during this hydration period and accordingly we strongly recommend that water is applied to the surface by way of garden sprinklers on the finished concrete on warm dry days and for at least five days following the pour, the water is to be at the owners cost, and the owners responsibility to put water or water sprinklers on the finished concrete. Pinto concrete is another occurrence that refers to large irregular shaped, dark coloured blotches on the surface of hardened concrete. The exact mechanism that causes Pinto to occur is unknown however it is believed to be related to the curing process, ie. How it dries and how much moisture is moving through the slab. It may take several months for a Pinto effect to dissipate.

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Blundell Concrete does not take responsibility for Animals, Pedestrians, leaves or any other objects that interfere with recently laid concrete.

(g) Aggregate and Polished Concrete

Exposed aggregate and/or polished concrete are natural products and can vary in colour, shape and size. These variations can also change the shade of the cut concrete matrix.

(h) New Concrete – What to expect

Concrete takes approximately 3-6months to harden and dry out. With time concrete gains strength and lightens in colour. The surface finish must provide skid resistance. A smooth surface will be treacherous to walk on when wet.

Concrete New Zealand standards require concrete to be viewed at 3 metres when assessing the finish. Concrete generally lightens in colour as it gains strength and dries. Contrasting dark and light area of new concrete will become less visible as the concrete dries out. A more severe type of discolouration is "Pinto". The possible causes are many and varied. Variation in the distribution and stone size is to be expected. Exposing the surface can also expose surface defects. This can also include bald patches with very little stone showing and inconsistency of coverage. Concrete is made up of natural products and as such there are many variable out of our control. Expansion cuts are placed on expected shrinkage points to minimise potential for cracking.

All Concrete will have a Mottled Appearance

All Concrete will Crack

Liability

- 51** Where the Customer is a "Consumer" under the Consumer Guarantees Act and acquires any Goods, or holds itself out as acquiring Goods, for the purposes of a "Business" (as those terms are defined in the CGA) then to the fullest extent permissible by law Blundell and the Customer agree the CGA, Fair Trading Act and any other applicable consumer law is hereby excluded. Otherwise, where the Customer is a "Consumer" these Terms are to be read subject to the terms of the CGA.
- 52** Subject to clause 50, and to any express written warranties given by Blundell (or the manufacturer of the Goods) to the Customer in writing, all conditions, warranties, descriptions, representations and statements as to fitness or suitability for any purpose, workmanship, tolerance to any conditions, merchantability or otherwise, express or implied, are expressly excluded to the fullest extent permitted by law.
- 53** To the fullest extent permitted by law, Blundell has no liability (whether statutory, in contract or tort (including negligence's, or howsoever) to the Customer or any of its agents or employees for any physical or special damage, direct loss, indirect loss, economic loss of any kind (including loss of profits and expectation loss), any other loss or costs

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(including legal and solicitor/client costs) caused or contributed to by Blundell or any of its agents or employees in respect of any products or services supplied or any quotation or estimate given. Without limiting the foregoing Blundell has no responsibility or liability for any dangerous good(s) or any contaminant, ozone depleting or hazardous substance in or emitted by any goods.

54 Blundell will **not** be liable in respect of:

- (a) any modification of or tampering with the products and services or any use of the products and services either contrary to Blundell's instructions and/or sooner than Blundell has advised the products and services may be used;
- (b) any defect in the products and services as a result of any moisture or dampness emanating from beneath the concrete substrate, existing stains or marks on the surface, changes in the porousness, racking in the concrete surface or substrate or distribution of the aggregate contained in the concrete; and/or
- (c) any defect, cracking, discolouration, imperfection or other effect set out in clauses 50(a)-(h).

55 To the extent that notwithstanding clauses 51 to 54 Blundell is found liable to the Customer its liability (whether statutory, in contract or tort (including negligence) or however) shall be limited to an amount equal to the Price of the Works.

Security

56 As security for any sum owed by the Customer to Blundell, Blundell shall have the right at its absolute discretion to complete and register a mortgage (in the form of the then current New Zealand Law Society all obligations mortgage) over any interest in any land owned or held by the Customer now or in the future (whether a beneficial or legal interest owned jointly or alone and as trustees or otherwise) and/or to lodge a caveat against the title to such land and the Customer irrevocably appoints Blundell as its attorney for the purposes of executing and registering such mortgage and specifically authorises Blundell to lodge a caveat against such land.

Default

57 If at any time and for any reason an Event of Default occurs, then (without prejudice to any other remedies Blundell may have):

- (a) Blundell may suspend or cancel (in whole or in part) this Contract or any order created under these Terms or any other contract with the Customer by written notice to the Customer;

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- (b) Blundell may delay delivery of any products and/or services until the matter is resolved to Blundell's satisfaction;
- (c) any and all sums due and all invoiced amounts will become immediately due and payable;
- (d) each security interest created under these Terms will become immediately enforceable.

Indemnity and Supporting Guarantee

58 The Customer hereby indemnifies Blundell, its employees, officers, agents, any Receivers and any attorney appointed pursuant to clause 56 (Indemnified Parties') against all losses, liabilities, damages, claims, actions, costs or expenses (including legal and solicitor/client costs and expenses) which Blundell may incur, of which have been made against Blundell as a result of or in relation to:

- (a) any act, omission, default by the Customer;
- (b) any breach of the Customer's obligations under these Terms;
- (c) anything done or omitted to be done, or purported to be done or omitted by Blundell and/or a receiver and/or an attorney in the exercise or purported exercise of its rights under these Terms or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgement).

59 The Customer must procure that a guarantee in the form attached to these terms is executed and returned to Blundell.

60 Blundell is not required to marshal, enforce, or apply under any security interest, guarantee or other entitlement held by Blundell at any time or any money or any property that Blundell at any time holds or is entitled to hold.

61 Blundell has the right to retain all documentation in relation to the products and services it has provided to the Customer (including but not limited to Council required documents and producer statements) until all sums due and owing to Blundell have been paid in full by the Customer.

62 Cancellation

To terminate the contract, you must provide us with a signed notice stating:

- (a) your intention to end the contract under this clause; and
- (b) the reason why you wish to end the contract.
- (c) If a contract is ended under clause 62 a & b, we shall be entitled to a reasonable price for all products and services provided to you under the contract up until the time that the contract is ended.

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63 Dispute Resolution

If you do not respond to the payment claim by paying the claimed amount in full or providing a payment schedule, then you will become liable to pay the claimed amount and the payee may recover from you, as debt due in the appropriate way by Dispute Court, Building Disputes Tribunal, or by Debt Collection Agencies. Also any costs incurred in the recovery of the debt will also be added to the balance of debt due inclusive all debt collection charges and Solicitors cost on a Solicitor client basis.

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