

1. **TERMS OF AGREEMENT** The following terms and conditions are to form part of any contract between Bedrock Concrete Pumping Limited ("BCP") and the Customer for the supply of goods and/or services. They supersede all prior representations, agreements or proposals, including if the Customer makes use of or refers to its own terms or conditions in its purchase order, equipment or services acceptance documentation or any other document. No other terms or conditions are binding unless BCP agrees in writing. Terms and conditions specified in BCP's quotation document take precedence over these terms and conditions to the extent of any inconsistency.
2. **DELIVERY** (a) BCP will deliver goods Ex Works (Incoterms 2000) at the BCP site specified or implied in BCP's quotation or, in the absence of a BCP site specified or implied in the quotation, at a site determined by BCP. (b) Dates for delivery or completion are not guaranteed. They are BCP's best estimates at the time of quotation and BCP will use best endeavours to deliver goods and/or complete services by the quoted dates. (c) Delivery/completion times are calculated from the date of receipt by BCP of a written order from the Customer and all Customer information and material necessary to enable work to proceed. If the Customer is required to approve any drawings or other information then the delivery/completion time is conditional upon prompt approval of such drawings or other information. (d) If delivery, acceptance or completion of goods or services is delayed for reasons under the Customer's control then any resulting expenses that BCP may incur (including but not limited to site and employee/staff related costs and overheads as well as the costs of demurrage, storage, double handling and insurance during storage) will be charged to and payable by the Customer. (e) BCP reserves the right to deliver goods and/or complete services ahead of schedule, provided that BCP notifies the Customer of its intention to do so at least one calendar day prior to delivery or completion.
3. **TECHNICAL INFORMATION** Any general documents such as drawings, catalogues, illustrations, advertisements or pamphlets that are not specific to the ordered goods or services and that may accompany the quotation or may otherwise be provided to the Customer by BCP are made available for general information only and shall not qualify as a contractual specification of the goods or services to be supplied by BCP.
4. **WARRANTIES** (a) Any representation, warranty, condition or undertaking that would be implied in a contract to which these terms and conditions apply either by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. However, nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Customer by the Fair Trading Act 1986 or any other applicable law that cannot be excluded, restricted or modified by agreement. (b) BCP will supply the goods and/or complete the services in accordance with the written specifications provided by the Customer and agreed by BCP. Goods and services will be constructed of suitable and appropriate materials and be of good and careful workmanship. (c) To the fullest extent permitted by law, BCP's liability for defective goods or services is limited to defects that occur within 12 months of delivery of the goods or completion of the services and, at BCP's option, to (in the case of goods) the replacement, repair or the payment of the cost of replacement or repair of the goods or equivalent goods and (in the case of services) the supplying of the services again or the payment of the cost of having the services supplied again. (d) BCP will only be liable under sub-clause (c) if the Customer has used and maintained the relevant items properly and as can reasonably be expected under the circumstances and in accordance with BCP's instructions for use and maintenance. BCP will not be liable under sub-clause (c) if the Customer or a third party has initiated repair, installation, refurbishment or modification of the relevant item without obtaining BCP's prior written approval. (e) The Customer will not be entitled to make a claim under this clause if it fails to notify BCP of a defect within 7 days of the defect occurring or if it fails to give BCP a reasonable opportunity to inspect the relevant goods or service items. (f) The Customer must return defective goods to the relevant BCP site freight prepaid, and BCP must deliver repaired or replaced goods in accordance with the same delivery terms that applied to the originally delivered batch.
5. **INTELLECTUAL PROPERTY** (a) BCP or its suppliers retain the intellectual property rights in relation to all goods and services and all documents, drawings, technical data, reports or other information provided to the Customer under a contract to which these terms and conditions apply. BCP grants the Customer a non-exclusive, non-transferable license to use the abovementioned information for the purposes expressly agreed in writing or, in the absence of such express agreement, for the purposes necessarily implied in the contract to which these terms and conditions apply. (b) The Customer acknowledges that the information described under sub-clause (a) is confidential and agrees that the information shall not be copied, reproduced or disclosed to any other party without the written consent of BCP, except to the extent necessary to fulfil the purpose described under sub-clause (a).
6. **CONSEQUENTIAL LOSS OR DAMAGES** (a) Notwithstanding any other provision contained in these terms and conditions except as set out under item (b) of this clause and except to the extent liability cannot legally be limited or excluded, BCP will not be liable to the Customer, whether in contract, tort (including negligence and strict liability), indemnity, breach of warranty, under statute, in equity or otherwise, for any indirect, incidental or consequential loss or damage, any loss of profit or revenue, loss of production, income, business, opportunity, goodwill or anticipated savings or increased costs of any kind including capital costs and transport costs, resulting from or arising under or in connection with a contract to which these terms and conditions apply. (b) The exclusion of liability in sub-clause (a) does not apply to the extent that loss or damage excluded in sub-clause (a) is caused by the wilful misconduct or fraud by BCP.
7. **LIMITATION OF LIABILITY** (a) Notwithstanding any other provision in these terms and conditions except as set out in sub-clause (b) and except to the extent liability cannot legally be limited or excluded, BCP's aggregate liability to the Customer resulting from, arising under or in connection with a contract to which these terms and conditions apply, whether in contract, tort (including negligence and strict liability), indemnity, breach of warranty, under statute, in equity or otherwise, will not exceed an amount that is equal to 10% of the price quoted by BCP for the goods and/or services to be supplied under the relevant contract. (b) The limitation of liability under subclause (a) will not apply to any BCP liability for personal injury or death or wilful misconduct or fraud.
8. **CHANGES TO A CONTRACT** Any additions or modifications that the Customer may request in relation to the ordered goods or services will require the written approval of BCP and entitle BCP to adjust the relevant prices and other terms of the contract. Order numbers cannot be reduced, and orders cannot be cancelled without prior written consent of BCP and on terms that indemnify BCP against costs and loss (including loss of profit).
9. **PRICES, PAYMENT, TAXES & INTEREST** (a) Quoted prices are based on conditions at the time of quotation in relation to, among other things, the cost of materials, transport and labour, statutory and industry requirements and standards as well as, in relation to international supplies, applicable exchange rates. Any changes to these conditions entitle BCP to adjust the quoted prices accordingly. (b) Payment shall be made as per terms stated on tax invoice. Payments may not be withheld because of minor defects, omissions or deficiencies in the goods or services if those non-compliances do not materially affect the value of the goods or services in terms of performance or aesthetics. (c) If the supply of goods or services results in BCP becoming liable for any GST then the quoted price will be increased so that BCP receives an amount from the Customer that reflects the sum of the quoted price and the GST liability. Any other tax, duty or government charge applicable to the delivery of the goods or completion of the services will be added to the quoted price. (d) BCP may charge interest on a daily basis at the rate of 8.5% per annum on any amount invoiced and overdue.
10. **TRANSFER OF TITLE AND RISK** (a) Title in goods supplied by BCP will pass to the Customer upon payment for the relevant goods in full. (b) Transfer of risk to the Customer shall occur upon delivery Ex Works (Incoterms 2000) at the relevant BCP site. Transfer of risk shall only occur at a different time if BCP agrees in writing to arrange transportation of goods to a location other than the relevant BCP site and to be responsible for the goods during transportation (e.g. by specifying Incoterms other than Ex Works).
11. **FORCE MAJEURE** BCP shall be entitled to suspend performance of all or any of its obligations under a contract to which these terms and conditions apply to the extent that such performance is impossible or made unreasonably difficult by any event that is beyond BCP's reasonable control. This shall include, but not be limited to severe weather conditions, war conditions, riots, sabotage, industrial disputes and defaults of BCP's suppliers.
12. **ASSIGNMENT** Neither party may transfer any of its rights or obligations under a contract to which these terms and conditions apply without the prior written consent of the other party.
13. **LAW & JURISDICTION** Any contract to which these terms and conditions apply shall be construed and operate according to the laws of New Zealand, and the parties submit to the exclusive jurisdiction of the courts of New Zealand. The place of all court proceedings or other dispute resolution procedures shall be Auckland.