

1. Definitions

- 1.1 “Consultant” means Concrete Structure Investigations Limited, its successors and assigns or any person acting on behalf of and with the authority of Concrete Structure Investigations Limited.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting the Consultant to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
 - (d) Body Corporate and Company Share
- 1.3 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Consultant in the course of it conducting, or supplying to the Client, any Services.
- 1.4 “Services” means all Services supplied by the Consultant to the Client at the Client's request from time to time.
- 1.5 “Price” means the price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between the Consultant and the Client in accordance with clause 5 of this contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Consultant.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Consultant.
- 2.3 In the event that the Consultant is required to provide the Services urgently, that may require the Consultant's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Consultant reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Consultant and the Client.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 The Client acknowledges and accepts that where the Consultant provides project management, site supervision, organises trades, plant, equipment or arrange work that is excluded from the Consultant's quotation, this service shall be charged at the Consultant's standard hourly rate (or hourly rate for travel if applicable).

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Consultant shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Consultant in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Consultant in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Consultant; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 3.3 Limitation of Liability to align with CSI Insurances.

4. Change in Control

- 4.1 The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Consultant's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Consultant to the Client; or
 - (b) the Consultant's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. Acceptance of the quote may be provided by email or in writing at which time a Client Information Sheet shall be issued and requires to be returned before mobilisation on the Services can begin. Onsite timeframes will be confirmed on acceptance.
- 5.2 The Consultant reserves the right to change the Price if a variation to the Consultant's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site and/or work face, availability of machinery, safety considerations, prerequisite work by any third party not being completed, or as a result of any increase to the Consultant in the cost of Incidental Items and labour) will be charged for on the basis of the Consultant's quotation and will be shown as variations on the invoice. The Client shall be required to accept or reject with reasons, to any variation submitted by the Consultant within ten (10) working days. Failure to do so will entitle the Consultant to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 The Client agrees to indemnify the Consultant for all costs and expenses (including, but not limited to, disbursements, air travel, car rental, accommodation, sundries and the like expenses), incurred by the Consultant in connection with the provision of the Services. The Consultant shall fully document all such expenses for submission to the Client.
- 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Consultant, which may be:
 - (a) on delivery of the Services;
 - (b) before delivery of the Services;
 - (c) by way of instalments/progress payments in accordance with the Consultant's payment schedule;
 - (d) when client specifically asks for invoice to be sent by post and this has been agreed by the Consultant, payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;

- (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is twenty (20) days following the date of any invoice given to the Client by the Consultant.
- 5.5 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Consultant reserves the right to treat all retentions as placing the Client's account into default.
- 5.6 No allowance has been made in the Price for the deduction of Liquidated Damages. In the event that Liquidated Damages are deducted, the Consultant reserves the right to treat all such deductions for Liquidated Damages as placing the Client's account into default.
- 5.7 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 5.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, Visa or MasterCard credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Consultant.
- 5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any supply by the Consultant under this or any other contract for providing the Consultant's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Services**
- 6.1 At the Consultant's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.
- 6.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this contract.
- 6.3 The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.4 At the Consultant's sole discretion the cost of providing the Services is included in the Price.
- 6.5 Any time specified by the Consultant for delivery of the Services is an estimate only and the Consultant will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Consultant is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Consultant shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 6.6 Where the Consultant is delayed from starting the Services once arriving onsite due to, but not limited to, the site is not prepared or organised as agreed, the Client shall be charged for any down time that may result from such delay at the Consultant's standard hourly rate.
- 7. Nominated Sub-Contractors**
- 7.1 The Consultant shall engage nominated (specified by the Client) sub-contractors, as specified in the quotation, acting solely as agent on behalf of the Client and the following shall apply:
- (a) Payment is made to the sub-contractor by the Client
 - (b) Any other sub-contractor Payment Arrangements are made by mutual agreement of the Consultant and Client
- 7.2 The Consultant does not warrant the accuracy or quality of the sub-contractor's work or warrant that their recommendations are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Client agrees that they shall not make any demand on the Consultant or commence any legal proceedings against the Consultant, and the Consultant shall have no liability, whether in negligence or otherwise, to the Client in relation to any work performed by the sub-contractor.
- 8. Risk**
- 8.1 Irrespective of whether the Consultant retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Consultant may repossess the Incidental Items. The Client must insure all Incidental Items on or before delivery.
- 8.2 The Consultant reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 6.1.
- 9. Compliance with Laws**
- 9.1 The Client and the Consultant shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 9.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 9.3 The Consultant has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, the Consultant shall not be the person who controls the place of work in terms of the HSW Act.

10. Title

- 10.1 The Consultant and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid the Consultant all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 10.2 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Incidental Items shall continue.
- 10.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Consultant immediately upon request by the Consultant;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for the Consultant and must pay or deliver the proceeds to the Consultant on demand.
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Consultant and must dispose of or return the resulting product to the Consultant as the Consultant so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Consultant;
 - (f) the Client irrevocably authorises the Consultant to enter any premises where the Consultant believes the Incidental Items are kept and recover possession of the Incidental Items.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to the Consultant for Services – that have previously been supplied and that will be supplied in the future by the Consultant to the Client.
- 11.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of the Consultant.
- 11.3 The Consultant and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Consultant, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by the Consultant under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of the Consultant agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies the Consultant from and against all the Consultant's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Consultant's rights under this clause.
- 12.3 The Client irrevocably appoints the Consultant and each director of the Consultant as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Defects

- 13.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Consultant of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Consultant an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 13.2 For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant's liability is limited to either (at the Consultant's discretion) resupplying the Services or rectifying the Services provided that the Client has complied with the provisions of clause 13.1.

14. Consumer Guarantees Act 1993

14.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Consultant to the Client.

15. Use of Reports and Advice

15.1 Any advice that the Consultant gives to the Client, its employees or agents is for the Client's exclusive use and must be used only for the purpose described in the proposal/quotation.

15.2 Unless the Consultant gives the Client prior written consent, the advice:

- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Client's lawyers or other professional advisor assisting in the Services; and
- (b) may not be relied upon by any other party other than the Client.

15.3 The Consultant is not responsible to any other party other than the Client, who is provided with or obtains a copy of the Consultant's advice.

15.4 The Consultant's advice may, on occasion, be given to the Client in draft form or orally only on the basis that the Client may not rely on advice in that form. Accordingly, the Consultant shall not be responsible if the Client or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.

15.5 The Client acknowledges that the signed copy of the Consultant's final advice is the definitive version.

15.6 Sometimes circumstances may change after the Consultant has provided their final advice to the Client. If this happens the Consultant will not update any final advice it has provided to the Client under these terms and conditions. If the Client would like the Consultant to update their final advice, they must contact the Consultant and both parties can discuss a suitable arrangement with the Client.

16. Confidentiality / Intellectual Property

16.1 Both the Client and the Consultant agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

16.2 Exceptions to clause 16.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.

16.3 Where the Consultant has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of the Consultant. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Consultant.

16.4 The Client warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.

16.5 The Client agrees that the Consultant may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Consultant has created for the Client.

17. Default and Consequences of Default

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes the Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies the Consultant may have under this contract, if a Client has made payment to the Consultant, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Consultant under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

17.4 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Consultant;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

- 18.1 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the supply of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.
- 18.2 The Consultant may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any money paid by the Client for the Services. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits). The notice period required for any cancellation or alteration to the Services is a minimum of seventy-two (72) hours.

19. Privacy Act 1993

- 19.1 The Client authorises the Consultant or the Consultant's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Consultant from the Client directly or obtained by the Consultant from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Client shall have the right to request the Consultant for a copy of the information about the Client retained by the Consultant and the right to request the Consultant to correct any incorrect information about the Client held by the Consultant.

20. Construction Contracts Act 2002

- 20.1 The Client hereby expressly acknowledges that:
- (a) the Consultant has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Consultant by a particular date; and
 - (iv) the Consultant has given written notice to the Client of its intention to suspend the carrying out of construction/non-destructive testing work under the construction contract.
 - (b) if the Consultant suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Consultant exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Consultant under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Consultant suspending work under this provision.

21. Service of Notices

- 21.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. General

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts in New Zealand.
- 22.3 The Consultant shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 22.4 The Consultant may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of the Consultant.
- 22.6 The Consultant may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Consultant's sub-contractors without the authority of the Consultant. Where a Sub-contractor has provided content within any report and that subcontracted content is the subject of a legal challenge, the Consultant reserves the right to join with the subcontractor in defence of any such challenge.
- 22.7 The Client agrees that the Consultant may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Consultant to provide Goods to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.
- 22.10 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

