Australian Building & Construction Solutions Pty Ltd.
ABN: 83616685182
Address: 175 Salisbury Highways, Salisbury, SA 5108

GENERAL TERMS AND CONDITIONS OF TRADE

IN CONSIDERATION OF Australian Building & Construction Solutions Pty Ltd., ABN: 83616685182, Builder Licence number: 292230 (hereinafter referred as the "Company") supplying, delivering and installing the Services to the party whom the domestic building work is or to be performed under the Contract with the Company **(the "Customer")** annexed to these conditions:

(i) The Customer acknowledges and agrees that the following terms and conditions ("Terms") apply to and forms part of any contract for the supply for Good and/or Services by the Company and that these Terms take precedence over any Terms which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods shall constitute acceptance of these Terms.

(ii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

TERMS

These Terms are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company in writing by any means. Unless or except specifically excluded herein, the Company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

"Goods" and/or "Collateral" shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Company may intend to register a Security Interest.

"Price" shall mean the cost of the Goods as referred to in the Company's price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.

QUOTATIONS, ORDERS AND CONTRACTS

1. All quotations orders for the supply and installation of Services are made and/or accepted by the Company and subject to these Terms. The Customer's terms and conditions, howsoever provided, do not form part of these Terms (even if any representative of the Company signs those terms and conditions and/or they are annexed to these Terms or any quote or purchase order). Any variation or changes to these Terms (other than an update to these Terms by the Company), whether to apply to all subsequent orders, or any particular order, may only be made if it:

   (i) is in writing;

   (ii) is signed by authorised managers of both parties; and

   (iii) expressly states that it is a variation to these Terms, and the parties agree and acknowledge that their representatives and employees who are not authorised managers as referred to in clause (1)(ii) above do not have the authority to vary these Terms.

2. Nothing in any quotation or purchase order gives the Customer any lease or right to use the Company's plant and equipment ("Equipment") used to provide the services under these Terms. Title in and possession of the Equipment remains with the Company at all times.

3. Where the Customer has entered into an agreement with the Company for the provision of credit to the Customer ("Corporate Guarantee") the terms of the Corporate Guarantee shall prevail over these Terms to the extent of any inconsistency.

4. If the Customer places an order with the Company after receiving these Terms, the Customer shall be deemed to have read and unconditionally agreed to these Terms.

5. The price of concrete and/or any other services specified by the Company in any quotation:

   (i) will remain valid for a period of 30 calendar days for an order made by the Customer in accordance with the quotation, unless otherwise specified;

   (ii) does not include any of the following unless otherwise agreed in writing by the Company:

      (A) pest control and curing;

      (B) hard digging and ground preparation work, including but not limited to, filling, backfill, earthworks, compacting and levelling;

      (C) the grouting of walls and columns;

      (D) the supply of waterproofing and shrinkage reducing additives;

      (E) the disposal of soil and waste materials from the site to which the concrete is to be delivered (the "Site");

      (F) the provision of any surveying, building inspection or engineering services, including the provision of engineering certification for formwork design;

      (G) the provision of the provision of limestone, or coloured, exposed or polished concrete mixes;

      (H) the provision of traffic management and any other site allowances;

      (I) the provision of sealers, sealants and other applied finishes; or

      (J) the provision of external paving, kerbing and crossovers;

   (iii) is subject to any other conditions specified in the quotation.

6. A minimum of 24 hours' notice may be required for all orders of concrete. However, nonstandard mixes may require at least 72 hours' notice, subject to the availability of inclusions such as steel fibres, colours and waterproofing admixtures.

7. the Company reserves the right to accept or decline, in whole or in part, any order for concrete and/or other services placed by the Customer.

QUALITY AND STRENGTH OF CONCRETE

8. The Customer warrants to the Company that all specifications and other design information (the "Specifications") provided to the Company for the selection, manufacture, supply or installation of concrete is accurate and correct and suitable in all respects for the Customer's intended use for the Services.

9. Unless otherwise agreed in writing, the Company when giving the quotation or supplying and/or installing any concrete will not be taken to have approved any Specification as being suitable for any particular purpose and will not be liable for any loss or delay (or the cost associated with) resulting from any defects in or unsuitability of the Specifications. The Customer shall be liable to the Company for any costs arising from the Specifications as shown on the order or quotation being changed to that shown on the delivery docket.

10. Unless otherwise stated in writing, concrete delivered by the Company will comply with Standards Association of Australia AS 3600–2009, as amended at the time of delivery. the Company adheres to all requirements of the Building Code of Australia ("Code") and often exceeds the Code requirements in the concrete mixes, the number of joints and the standard of steel reinforcement.

11. Testing will not automatically be carried out. Testing will be arranged if requested by the Customer and will be charged to the Customer at the rates specified in the Company's price list which is available on the Company's website, or as notified to the Customer from time to time. the Company does not recognise and will not be bound by any test results unless concrete is sampled at the agitator chute and tested strictly in accordance with AS 13792007 and AS 1012.9-2014/ 1012.23-2015 (as amended at the relevant time) by an approved National Association of Testing Authority ("NATA") laboratory.

12. the Company shall not be liable for, and is hereby indemnified by the Customer in respect of, any claims made by the Customer or any third party which arise out of:

    (i) contamination of the concrete, or any defects which may develop in the concrete due to:

        (A) any faulty handling, placing or curing of the concrete by the Customer or any other person; or

        (B) any the addition of water, additives and/or other material to the concrete at the request of the Customer or the Customer's concreter.

    (ii) defects which may develop in the concrete due to:

        (A) weather conditions;

        (B) the use of specialised finishing equipment other than by the Company; or

        (C) any combination of the above and other factors.

13. Concrete contains materials of the Company's choice unless otherwise stated. The strength characteristics of the concrete are those shown on the face of the delivery docket. Customers should ensure that the strength shown is in accordance with the requirements of the Specifications at the time of delivery.

14. The Company's guarantee of strength (subject to clauses 40-45 below) ceases if the concrete is not in situ in accordance with temperature requirements of the relevant Australian Standards, or if any of the events referred to in clause 12 above shall occur.

15. The Customer acknowledges that:

    (i) the Company does not guarantee colour consistency for any concrete supplied as colour variations can be caused by various factors which are beyond the Company's control, including but not limited to, the amount of water added on Site, time and techniques of finishing, the time taken between pours, the age of the concrete, the curing environment and the sources of raw materials and pigments except to the extent specifically agreed under paragraph (ii) below;

    (ii) where colour control is requested, the Company and the Customer must agree on the colour/tone and the number of tone variations deemed acceptable in accordance with AS 3610-1995 (as amended from time to time) before the concrete is poured, in which case the Company will ensure the variation of colour is within that range;

    (iii) the Company does not guarantee the surface finish of the concrete resulting from same day washing of exposed mixes, or inconsistent or inappropriate application of surface retarders; or

    (iv) the Company does not guarantee the quality of finished products where the Customer does not order an adequate volume of concrete resulting in placement delays and cold joints.

DELIVERY

16. Delivery must be accepted by the Customer and the discharge must be completed as soon as possible after the arrival of the delivery vehicle on Site. If the discharge is not completed within 45 minutes after arrival on Site, waiting time in excess thereof will be charged at the rates of $2.74 per minute, or as notified to the Customer from time to time, except delay caused by the Company.

17. It is the Customer's responsibility to check the delivery docket and confirm that it is in accordance with the Customer's requirements before any concrete is unloaded. If delivery of concrete made in accordance with the description on the face of the docket is accepted, the Customer shall be liable to pay for it and shall have no claim against the Company for the concrete not being as ordered.

18. Delivery will be made to the kerb alignment or edge of the road unless previously agreed. If the Customer requires the delivery vehicle to leave a public road to gain access to the discharge or unloading location, the Customer shall:

    (i) ensure that the vehicle has a safe, suitable and unrestricted route between the kerbside nearest to the delivery address and the discharge or unloading location; and

    (ii) release and indemnify the Company against any loss, damage, cost (including recharges) or liability arising from events occurring while gaining or caused by such access unless solely caused by the Company's negligent act or omission. The signing of the final delivery docket (Total Order m^3) of any concrete pour shall constitute acceptance of individual deliveries on previous dockets forming part of the same pour.

19. While the Company uses reasonable endeavours to achieve delivery times, the Customer acknowledges that all times quoted for delivery are estimates only, and the Company will not be liable for any failure to deliver or for delay in delivery of concrete occasioned by strike, lockout and/or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Company.

20. The Customer shall not be relieved of any obligation to accept or pay for concrete by reason of any delay in delivery.

INSTALLATION

21. Where the Company is required to install concrete on Site:

    (i) the Company will do so in accordance with the Specifications and industry standards;

    (ii) the Company warrants that it will perform its services in a proper and workman-like manner;

    (iii) the Customer acknowledges that any boom pumps provided by the Company must not be used as a crane; and

    (iv) the Customer must:

        (A) provide safe, suitable and adequate access to the Site for delivery;

        (B) provide scaffolding, handrails and edge protection and access;

        (C) comply with all instructions and recommendations given by the Company regarding safety with respect to the use or operation of any pumps on Site;

        (D) must comply with the *Work Health and Safety Act 2012* (SA), including any other relevant safety legislation, regulations, rules or by-laws;

        (E) take all necessary precautions to ensure that anyone (other than the Company) avoids or minimises skin contact with wet concrete;

(F) prior to the installation date, procure and maintain all necessary insurances, including but not limited to, public liability for an amount no less than $5 million dollars;

(G) prior to the installation date, ensure all Site preparation work is completed, including but not limited to, filling, compacting and levelling and correct location of survey pegs; and

(H) ensure water and a suitable "wash out" area is made available to the Company, if required.

22. the Company may subcontract its obligation to install in its absolute discretion. the Company will be responsible for its obligations under these Terms notwithstanding that subcontracting.

PRICE / PAYMENTS

23. In this clause, any reference to a ***surcharge*** will mean the surcharge published by the Company in its price list, or as notified to the Customer from time to time.

24. Credit account Customers must pay the Company's tax invoices in accordance with the Corporate Guarantee. Other Customers must pay the Company's tax invoices in accordance with the Contract.

25. The price for concrete is normally quoted in squared meter (m^2), this value is transformed to cubic metre (m^3) delivered for a minimum load of 4m^3 (the "minimum load"). For loads of less than the minimum load, a surcharge will be payable. A surcharge will be payable for all deliveries after 3.00pm (ACDT) on weekdays or for deliveries after 12pm (ACDT) on Saturdays and all-day Sundays and Public Holidays. These surcharges will be added directly to the prices.

26. Where the Customer fails to comply with:

    (i) clause (21)(iv)(G) above, the Company will be entitled to charge reasonable rates for labour and materials, plus an administration fee of $80 plus GST; or clauses (21)(iv)(B), (21)(iv) and 4(a)(iv)(H) above, a surcharge will be payable by the Customer.

27. the Company reserves the right to change its price list at any time upon notice to the Customer. The price notified at the time the Customer places an order will continue to apply even if the price changes before the Customer's order is accepted by the Company.

28. If any concrete ordered for delivery is later cancelled, the Customer shall (on demand) pay the Company all expenses incurred up to the time of cancellation (including any concrete batched at that time unless resold). the Company's statement of expenses shall be prima facie evidence of its contents.

29. All concrete returned to the Company (or batched prior to a cancellation) will be paid for in full by the Customer and in addition, the Customer shall pay for the handling and disposal of the returned or batched concrete at the Company's ruling rates, save and except concrete with defects caused directly by the Company or returned due to a breach of these Terms by the Company.

30. If the Customer cancels an order that includes the use of a concrete pump, the Customer must (on demand) pay a cancellation fee as published by the Company in its price list which is the quotation, or as notified to the Customer from time to time. Where the order is cancelled after the departure of the vehicle to the Site, the Customer shall (on demand) also pay the Company the minimum rate charge for the pump as notified to the Customer.

VARIATIONS

31. The Customer must pay the agreed price of any variations in addition to the price quoted, and any applicable surcharges specified in the Company's price list which is stated in quotation. For the purposes of this clause, a "variation" includes (but is not limited to) any of the following:

    (a) variations to any orders for concrete where the variations are received after the minimum order notice in clause 6 and the Company incurs costs as a result; or

(b) any changes to Site access as a result of the storage of materials, service trenches, road closures or any other matter which affects the Equipment to be used or the duration of the pour.

GST

32. Any expression used in clauses 32-33 and which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning from clause 32 to 33.

33. Unless otherwise expressly stated, all amounts stated to be payable by the Customer under these Terms are exclusive of GST. GST is imposed on any supply made under or in accordance with these Terms, and the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

TERMINATION

34. A party ("Non-defaulting Party") may terminate these Terms at any time by written notice to the other party ("Defaulting Party") if any of the following apply:

    (i) the Defaulting Party fails to carry out any provision of these Terms, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 7 days after written notice to the Defaulting Party requiring it to be remedied;

    (ii) a judgement, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;

    (iii) an order for payment is made or judgment for an amount exceeding $10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;

    (iv) the Defaulting Party suspends or delays payment of its debts;

    (v) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;

    (vi) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);

    (vii) the Defaulting Party (being a corporation) is deregistered; or

    (viii) the Defaulting Party breaches a Corporate Guarantee; or

    (ix) to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.

35. These Terms may be terminated by the Company at any time effective immediately upon the given of the notice

    If a change occurs in the Customer's circumstances which, in the Company's reasonable opinion, may have a material adverse effect on the Customer's ability to comply with its obligations under these Terms.

    Examples include (but are not limited to):

    (i) a change in the Customer's financial position up and until an Insolvency Event occurring;

    (ii) the Customer factoring its debts; or

    (iii) the Customer becoming party to litigation, arbitration or any other administrative proceeding.

36. If the Customer is the Defaulting Party under these Terms (or where any of the events in clause 35 occurs) the Company may, at its option, exercise any or all of the following rights in addition to any other rights it may have under these Terms or at law:

    (i) suspend deliveries of further concrete to the Customer whether under these Terms or otherwise; and/or

    (ii) withdraw any credit facilities which may have been extended to the Customer under a Corporate Guarantee, and require immediate payment of all moneys owed to the Company by the Customer.

37. The Defaulting Party (or in the case of an event under clause 35, the Customer) will be responsible for, and will indemnify the Non-Defaulting Party (or the Company, as applicable) against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party (or the Company, as applicable) as a result of the breach or event.

38. On termination of these Terms under these clauses 34-39, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

39. In these Terms, an Insolvency Event means the happening of any of these events in relation to the Defaulting Party:

    (i) where the Defaulting Party enters into a compromise or arrangement (or announces one) under s 411 of the *Corporations Act 2001* (Cth);

    (ii) where a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party's property; or

    (iii) where the Defaulting Party enters into voluntary administration.

LIABILITY

40. In the event any material supplied by the Company under this contract being defective, to the extent permitted by law, the liability of the Company (if any) shall be limited to removal and replacement of such defective material.

41. To the extent permitted by law, the Company's liability under any condition or warranty which cannot legally be excluded is limited to:

    (i) the replacement of the concrete;

    (ii) the repair of the concrete (if applicable);

    (iii) the payment of the cost of replacing the concrete; or

    (iv) the payment of the cost of having the concrete repaired (if applicable).

42. If any concrete to be supplied by the Company under these Terms fail to conform in a material respect with the Specifications then:

    (i) the Company is not liable unless the Customer notifies the Company of the failure within 10 consecutive days after the date of delivery of the concrete; and

    (ii) the liability of the Company is in any case limited as set out in clause 41.

43. Where the Customer acquires concrete from the Company for the purpose of on-supplying to another person ("consumer"), the Company shall not be liable for any consequential loss suffered by the Customer unless otherwise stated in a contract or agreement. However, to the extent required by the Australian Consumer Law, the Company may be liable for any consequential loss suffered by the consumer.

44. The provisions of clauses 42-43 are subject to the provisions of any statutory condition or warranty which cannot legally be excluded.

45. In these Terms, "consequential loss" means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

FORCE MAJEURE

46. A party ("Affected Party") is not liable for any delay or failure to perform an obligation (other than to pay money) under these Terms caused by an act of God, war, riot, insurrection, vandalism or sabotage, strike, lockout, ban, limitation of work or other industrial disturbance or a law, rule or regulation of any government or governmental agency.

47. The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event specified in clause 46 ("Event").

48. The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event.

49. Any party may terminate these Terms at the expiration of not less than 7 days' notice to the other party if performance of an obligation is prevented by an Event, or a delay caused by the Event exceeds 30 days.

50. If a party terminates these Terms under clause 49, all money previously paid under these Terms for which no goods, services or other consideration has been provided must be refunded.

DISPUTE RESOLUTION

51. If a dispute or difference arises between the Company and the Customer in respect of any fact, act, matter or thing arising out of or in any way connected with these Terms and one party requires the dispute or difference to be resolved, then that party will promptly give the other party a written notice giving details of the dispute.

52. Within 14 days of a party receiving a notice, the parties, and/or their delegates, must meet and attempt to resolve the dispute in good faith.

53. If, within 14 days of the meeting, the dispute is still not resolved, then, either party may proceed to litigation.

54. In the event of any dispute between the parties, the Customer shall pay all undisputed amounts to the Company.

PRIVACY POLICY

55. The Company is committed to protecting Customer's privacy while providing Customer with a safe experience in accordance with the Australian Privacy Principles within sch 1 of the *Privacy Act 1988* (Cth). The privacy policy demonstrates how Customer's personal and property information is collected, used and managed. the Company only collects information that is necessary to provide Customer with the best service and to assist with the operation of the business. This information includes such: e-mail addresses, names, home or work addresses or telephone number. We also may collect information such as: site plans, property measurement and passcode to access the property during operation.

56. Personal information provided to the Company is only used when enquires are being made about products of services, as well as contacting between customers. Such information may be used by our sub-contractors to contact customer before and during the operation. However, this information will not be disclosed without a notification to the customer.

57. Under no circumstance will the Company sell, rent or lease customer lists to third parties. Data may be shared with partners when conducting business analytics, providing customer support, or arranging deliveries. All intermediates are prohibited from using Customer information apart from the required task, as they are required to maintain confidentiality of Customer's information.

58. the Company will only disclose Customer's personal information if required to do so by law or in the good faith to:

    (i) Comply with pt IV div 3A s 33C and pt IV div 1 s 40 of the *Privacy Act 1998* (Cth), or comply with legal process served on the Company

    (ii) Protect and defend the rights or property of the Company

    (iii) Act to protect the personal safety of website users, or the public

59. the Company takes every step that the information Customer have provided remains confidential, ensuring there is not unauthorised access or disclosure of personal information. As part of product warranty, the Company will keep final quotations and receipts of the projects.

60. In the event of eligible data breach specified in pt IIIC div 2 of the *Privacy Act 1988* (Cth), then the Company takes every step to:

    (i) Notify the Customer and the Australian Information Commissioner ("Commissioner") in accordance with pt IIIC div 3 of the *Privacy Act 1988* (Cth), or

    (ii) Comply with legal process served on the Company

GENERAL PROVISION

61. Any reference to the Customer in these Terms means and includes the Customer, his/her employees, agents, subcontractors, assignees of, and any entity claiming through or under the Customer. The actions or signatures of any person appearing to have the authority of the Customer shall bind the Customer.

62. In the event of any dispute arising between the Company and the Customer, the Customer shall forthwith pay the Company the amount claimed by the Company, to be held by the Company until determination of the dispute.

63. A statement signed by the Company's authorised representative, certifying the amount of any increased cost or other claim by the Company shall in the absence of manifest error be prima facie evidence of its contents.

64. These Terms do not create or evidence a partnership or joint venture between the parties.

65. These Terms are governed by and are to be construed according to the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia.

66. If any part of these Terms is, or becomes, void or unenforceable, that part is, or will be, severed from these Terms so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

67. A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege. A purported modification, variation or amendment of these Terms or any waiver of any rights of any party shall not have any force or effect unless and until the same is in writing, executed by the parties or, in the case of a waiver, is executed by the party whose rights are thereby waived.

68. These Terms constitute the entire agreement between the parties with respect to the subject matter of these Terms and contains all of the representations, warranties, covenants and agreements of the parties

in relation to the subject matter of these Terms as at the date of these Terms. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and has no further effect.

69. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting these Terms.

70. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

71. Facsimile signatures are binding and are considered to be original signatures.

IN WITNESS WHEREOF the Customer have duly affixed their signatures under hand and seal on this … day of (Month), 2020.

_____

Per: _____(Seal)

Full name: _____