JDM Concreting Pty Ltd - Terms & Conditions of Trade

1. Definitions

1.1 "Contractor" means JDM Concreting Pty Ltd (ABN: 33 602 109 731), its successors and assigns or any person acting on behalf of and with the authority of JDM Concreting Pty Ltd.

1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one, the term Client is a reference to each Client jointly and severally.

1.3 "Works" means all works, services or materials supplied or performed by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

1.4 "Price" means the amount payable for the Works as agreed between the Contractor and the Client in accordance with clause 6 below.

1.5 “Quotation” means a quote provided to the Client by the Contractor for the performance of work pursuant to these Terms in accordance with clause 3.1 below.

1.6 “Terms” means the terms and conditions in this document which constitute the entire agreement between the Contractor and the Client for the provision of works, services and/or materials from time to time.

2. Application of Terms

2.1 The Client agrees that the Client has read and agreed to the Terms as set out in these terms and conditions of trade. These Terms apply to all work performed by the Contractor, whether arising from a Quotation, or otherwise. To avoid any doubt, a Quotation may include additional terms. If the Quotation includes additional terms, the additional terms prevail over these Terms to the extent of any inconsistency, and only apply to the work performed under the Quotation.

3. Quotes

3.1 The Contractor may from time to time give the Client a Quotation stating:

(a) the scope of work for the Quotation;

(b) an estimate of the Contractor’s charge for the performance of such work; and

(c) any additional terms the Contractor considers appropriate.

3.2 Where the Contractor has given the Client a Quotation:

(a) the Contractor need not commence work until the Quote has been accepted in writing by the Client;

(b) the Client shall accept the Quotation by providing written acceptance or permitting, directing or instructing the Contractor to commence any part of the work;

(c) acceptance by the Client of the Quotation will constitute acceptance by the Client of these Terms; and

(d) Quotations are valid for thirty (30) days only, unless an extension has been authorised by the Contractor.

3.3 The copyright in all plans, sketches, design ideas and custom-made solutions which appear in the Contractor’s Quotation shall be the property of the Contractor. On payment of all invoices for the works, the Client will be granted a non-transferrable, non-exclusive licence to use the works for the specific purpose set out in the Quotation.

4. Acceptance

4.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Client places an order for or accepts delivery of any Works.

4.2 Upon receipt of acceptance as within clauses 3.2 and 4.1, a contract shall come into existence between the Contractor and the Client subject to these Terms.

4.3 These terms and conditions may only be amended with the Contractor's consent in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.

5. Change in Control

5.1 The Client shall give the Contractor 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).

5.2 The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1 The Price is an estimate only and is subject to change by variation.

6.2 At the Contractor's sole discretion, the Price shall be either:

(a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or

(b) the Contractor's quoted Price in a Quotation (subject to clause 6.3) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's Quotation in writing within thirty (30) days.

6.3 The Contractor reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or

(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, poor weather conditions, latent conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, safety considerations, prerequisite work by any third party not being completed, the effects of changes to wage rates due to industry awards or hidden pipes and wiring in walls etc.) which are only reasonably discovered on commencement of the Works; or

6.4 The Price (including rates, as applicable) is subject to adjustment for rise and fall in the costs of materials, goods, labour, plant and equipment for any cause whatsoever.

6.5 At the Contractor's sole discretion, a deposit may be required from the Client. If a deposit is so requested by the Contractor, the Client acknowledges the Contractor is under no obligation to undertake any work as requested by the

Client until the deposit is received by the Contractor in full and when all details pertaining to the Terms are finalised. In the event of default as to payment owing to the Contractor on the part of the Client, the Contractor shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the Terms in addition to any remedy available to the Contractor at law or in equity.

6.6 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
(a) on completion of the Works; or
(b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.

6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.

6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. 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.

6.9 Where the Client fails to make payment of the Price by the due date in accordance with clause 6.6, the Contractor reserves the right to halt any further work until such time as the outstanding payment is made.

6.10 The Client must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Client's failure to pay to the Contractor all sums outstanding as owed by the Client to the Contractor, including without limitation any debt collection and legal costs incurred in enforcing payment.

6.11 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 Contractor's sole discretion, such interest shall compound monthly at such a rate) after as well as before any judgment.

7. Commencement, Delivery and Completion of the Works

7.1 The Contractor performs the Works, including site visits, at its sole discretion and in accordance with its business schedule. The Contractor does not provide any guarantees in relation to the progress of the Works from commencement to the completion date.

7.2 The progress of the Contractor's performance of the Works is subject to the prompt availability and supply of:
(a) full information from the Client;
(b) materials from suppliers;
(c) provision of unobstructed access as specified in clause 11 below; and
(d) any other matter the Contractor determines is reasonably required or necessary for the performance of the Works.

7.3 Any failure in respect to the circumstances outlined in clause 7.2 will justify a reasonable extension of time and any completion date will be extended commensurately.

7.4 Any commencement and completion dates that are provided to the Customer by the Contractor are only estimates and are given in good faith according to the present conditions and circumstances in the control of or in the best information available to the Contractor.

7.5 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) in respect of any delay to the completion of the Works not caused by or attributable to any act or default of the Contractor or any employees or agents of the Contractor that the Contractor could have foreseen at the time the contract was made. This includes, but is not limited to, any failure by the Client to:
(a) make a selection; or
(b) have the site ready for the Works; or
(c) notify the Contractor that the site is ready.

7.6 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.

7.7 The Contractor shall not be liable, and the Client indemnifies the Contractor in all respects for any liability, claims, expenses, loss or damage whatsoever associated with any failure by the Contractor to commence or complete the Works (or any part of them) within a specific time frame (unless, and only to the extent that, this clause is expressly waived in writing by the Contractor).

7.8 Should the Works be delayed by the Client or by any other reason not being caused by an employee or agent of the Contractor after the commencement of the Works, the Client shall reimburse or make good any loss or damage sustained by the Contractor.

8. Risk

8.1 If the Contractor retains ownership of the Materials under clause 13, then;
(a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
(i) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
(ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
(b) where the Contractor is to both supply and install Materials, then the Contractor shall maintain a contract works

insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

8.2 Notwithstanding the provisions of clause 8.1, if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location, then such materials shall always be left at the sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed, then replacement of the Materials shall be at the Client's expense.

8.3 Where the Client has supplied materials for the Contractor to complete the works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

8.4 The Client shall ensure that all unfixed materials on the site or such other part of the Works that may be carried out by the Contractor from time to time shall be protected from damage caused by any person not being an employee or agent of the Contractor and shall be responsible for any damage caused by such persons.

8.5 If the Client supplies the design plans and specifications for the Works, the Contractor takes no responsibility whatsoever and shall not be liable for any loss or damage resulting from any defects in the design plans and specifications or the compliance or otherwise with Australian Standards where applicable to the extent permitted by law (excepting statutory rights that cannot be excluded).

8.6 The Client must respond quickly and in writing to any requests that the Contractor makes for information, directions or decisions, and to provide true and accurate information. The Contractor takes no responsibility whatsoever and shall not be liable for any loss or damage resulting from any information, documents, directions, decisions or other matters provided by the Client to the Contractor in relation to these Terms or the Works.

8.7 The Client acknowledges that variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.

8.8 Detailed drawings of any services that will be embedded in the concrete are to be provided to the Contractor prior to commencement of any works. Whilst all due care will be taken, no liability will be accepted by the Contractor for damage to the services or any other element embedded in the concrete.

8.9 The Client acknowledges that the curing time for concrete can be affected by elements (including, but not limited to, temperature or the weather) as such that the Contractor offers no guarantee as to the length of time the curing process will take.

8.10 The Contractor offers no guarantee against cracking of concrete.

8.11 Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon, then the Contractor shall require the Client or their agent to authorise commencement of the works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works.

9. Variations

9.1 The parties may agree to vary the scope of the Works and such variation shall not vitiate the Terms but the Contractor shall be entitled to claim further payment (as agreed between the parties) and a reasonable extension of time for such variation as applicable.

9.2 If the payment for such variation is not agreed prior to commencement, the price of the extra work shall be the actual cost to the Contractor (including but not limited to materials, travel time, labour at the charge up rate as per the schedule of rates) together with an additional percentage of 15% of the actual cost.

9.3 The Client shall indemnify the Contractor for any additional cost incurred by the Contractor should the Client increase the scope of the Works to be provided by the Contractor.

10. Measurement of Concreting and/or Civil Works

10.1 At the completion of the works, the Client or the representative of the Client shall be in attendance and the works shall then be duly measured. In the absence of either the Client or their representative the Contractor shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the works completed.

11. Site and Site Conditions

11.1 The Client shall ensure that the Contractor has clear, safe, unrestricted and free access to the work site at all times to enable them to commence and undertake the Works.

11.2 In the event that the Contractor encounters tolerances in the building structures and components, or any other factor which is not in accordance with Australian Standards and/or industry standards, or latent conditions not reasonably obvious on inspection, the agreed cost to overcome these conditions will be added to the amount due and payable by the Client as a variation.

11.3 The Contractor will take reasonable steps to minimise any damage to the site, but some damage may be unavoidable as a consequence of the Works.

11.4 The Client acknowledges that they have been notified of the potential risks associated with the Works and accept such risks. The Contractor shall not be liable for any loss or damage to the site or the Client’s property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the gross negligenceof the Contractor, and the Client provides the Contractor with a corresponding indemnity.

12. Underground Locations

12.1 Prior to the Contractor commencing any work, the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

12.2 Whilst the Contractor will take all care to avoid damage to any underground services, the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Title

13.1 The Contractor and the Client agree that ownership of the Materials delivered by the Contractor (whether installed or not) shall not pass until:

(a) the Client has paid the Contractor all amounts owing to the Contractor; and

(b) the Client has met all of its other obligations to the Contractor.

13.2 Receipt by the Contractor 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.

13.3 It is further agreed that:

(a) until ownership of the Materials passes to the Client in accordance with clause 13.1, the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request;

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;

(c) the production of these Terms by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;

(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;

(e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;

(f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;

(g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;

(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor; and

(i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14. Personal Property Securities Act 2009 ("PPSA")

14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

14.2 Upon assenting to these Terms in writing, the Client acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been supplied and that will be supplied in the future by the Contractor to the Client.

14.3 The Client undertakes to:

(a) promptly 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 Contractor may reasonably require to:

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);

(b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Contractor; and

(e) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

14.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.

14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

14.6 The Client waives its rights as a granter and/or a debtor under sections 142 and 143 of the PPSA.

14.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

14.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 14.3 to 14.5.

14.9 Subject to any express provisions to the contrary nothing in these Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

15.1 In consideration of the Contractor agreeing to supply the Materials, 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 (including, but not limited to, the payment of any money).

15.2 The Client must provide the form of security (including but not limited to a director's guarantee) specified by the Contractor (if any) as a condition precedent to the operation of the contract. The Contractor may waive this requirement at their absolute discretion.

15.3 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.

15.4 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

16.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery or completion notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the **Terms**, description or Quotation. The Client must notify any other alleged defect in the Materials/Works in writing within seven (7) days of becoming aware of the alleged defect. Upon such notification, the Client must allow the Contractor an opportunity to investigate and inspect the Materials or to review the Works provided within a reasonable time, including providing reasonable access to the site or premises as applicable.

16.2 If the Contractor determines (such determination being at their absolute discretion) that the Works are defective, they will repair the defects within thirty (30) days of completing their investigation or as agreed between the parties. The Client will give the Contractor reasonable access during working hours to undertake any work required.

16.3 If the Client does not comply with clauses 16.1 and 16.2, such conduct will constitute an absolute waiver of any right or claim to rectification, compensation, restitution or other remedy at law or equity (including but not limited to under the contract or statute), to the extent permitted by law (excepting statutory rights that cannot be excluded) and the Customer provides the Contractor with a corresponding indemnity.

16.4 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms **(Non-Excluded Guarantees).**

16.5 The Contractor acknowledges that nothing in these Terms purports to modify or exclude the Non- Excluded Guarantees.

16.6 Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Materials or the Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law

16.7 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.

16.8 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.

16.9 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.

16.10 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:

(a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
(b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
(c) otherwise negated absolutely.

16.11 Subject to this clause 16, returns will only be accepted provided that:

(a) the Client has complied with the provisions of clause 13.1; and
(b) the Contractor has agreed that the Materials are defective; and
(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.

16.12 Notwithstanding clauses 16.1 to 16.11but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(a) the Client failing to properly maintain or store any Materials;
(b) the Client using the Materials for any purpose other than that for which they were designed;
(c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) interference with the Works by the Client or any third party without the Contractor's prior approval;
(e) the Client failing to follow any instructions or guidelines provided by the Contractor; or
(f) fair wear and tear, any accident, or act of God.

16.13 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

17. Confidentiality and Intellectual Property

17.1 For the purpose of this clause:

(a) Confidential Information means confidential and proprietary information concerning the products, technology, trade secrets, know-how, marketing strategies, financial information, concepts, concept plans, client databases, costing, quotes and business of the Contractor which is disclosed to the Client or its agents, officers, servants or employees whether before or subsequent to execution of these Terms; and

(b) Contractor Intellectual Property means the name (in whole or in part), logo, website, associated materials and other intellectual property (whether or not capable of statutory protection), including copyright, designs and trademarks, details of customers and members and know-how, whether created before or after the contract, of the Contractor.

17.2 The Customer must not directly or indirectly, without the prior written consent of the Contractor, use, disclose, publish or permit the use, disclosure or publication of Contractor Intellectual Property or Confidential Information, other than in accordance with these Terms. The obligations in this clause survive termination of these Terms.

17.3 The Contractor owns the right to all the Contractor Intellectual Property and the contract does not convey any interest of a proprietary or any other nature to the Client or to any other person.

17.4 If requested by the Contractor, the Client must immediately return to the Contractor, or destroy as the Contractor directs, all original documents pertaining to the Works, containing any Confidential Information and or the Contractor Intellectual Property and any copies of those documents.

17.5 To avoid any doubt, the copyright in all designs, drawings, documents, data, plans, schedules and products prepared and comiled by the Contractor shall remain vested in the Contractor, and the Client shall not have the right or licence to use such designs, drawings, documents, data, plans, schedules and products without the express written consent of the Contractor.

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

17.7 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.

18. Default and Consequences of Default

18.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these Terms, then the Contractor may suspend or terminate the supply and performance of Works to the Client by written notice. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

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

(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion, the Client will be unable to make a payment when it falls due;

(b) the Client becomes insolvent or bankrupt, 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18.3 The Contractor may at any time and for any reason terminate these Terms by giving the Client 14 days' written notice.

18.4 To avoid any doubt, if these Terms are terminated, the Client must pay the Contractor for the Works performed and provided to the Customer up to the date of termination.

18.5 The rights of both parties under this clause do not limit or prejudice any of its other rights under these Terms.

19. Compliance with Laws

19.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and by laws of government, local and other public authorities that may be applicable to the Works.

19.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

19.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

19.4 Any extra work required or costs incurred to comply with acts, by-Laws and/or regulations will be treated as a variation.

20. Dispute Resolution

20.1 If a dispute arises between the parties to these Terms, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

20.2 Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute in good faith. At any such, conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

20.3 In the event that the dispute remains unresolved, either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to mediation or arbitration.

21. Cancellation

21.1 The Contractor may cancel any contract to which these Terms apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice, the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.2 In the event that the Client cancels the delivery of Works, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

21.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not

be accepted once production has commenced, or an order has been placed.

22. Liability

22.1 The liability of the Contractor to the Client arising out of, or in connection with, these Terms and the Works is limited to (so far as permitted by law) the amount of the Price for the Works.

22.2 The Contractor shall be under no liability whatsoever to the Client for any indirect, special and/or consequential loss and/or expense of any nature whatsoever (including, but not limited to, loss of profit, revenue, business) arising out of, or in any way connected with, these Terms or the Works.

22.3 To the extent permitted by law (excepting statutory rights that cannot be excluded), the Client indemnifies the Contractor in respect of all claims, expenses and liabilities whatsoever which may be made against the Contractor in respect of the Works, except insofar as such claim arises from the Contractor's negligence or unrectified breach of contract.

23. Indemnity

23.1 The Client is liable for and indemnifies the Contractor in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Contractor suffers, incurs or is liable for as a result of or in respect to breach of these Terms, or any wrongful act or omission by the Client (including but not limited to negligence, misrepresentation, unlawful conduct and wilful misconduct).

24. Privacy Act 1988

24.1 The Client agrees for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Contractor.

24.2 The Client agrees that the Contractor may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

24.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

24.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Client and Contractor or required by law from time to time):

(a) the provision of Works; and/or
(b) the marketing of Works by the Contractor, its agents or distributors; and/or
(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.

24.5 The Contractor may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client;
(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

24.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
(b) details concerning the Client's application for credit or commercial credit and the amount requested;
(c) advice that the Contractor is a current credit provider to the Client;
(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
(f) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
(g) advice that cheques drawn by the Client for one hundred dollars ($100) or more, have been dishonoured more than once;
(h) that credit provided to the Client by the Contractor has been paid or otherwise discharged.

25. Building and Construction Industry Security of Payment Act 2009 (SA)

25.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA) may apply.

25.2 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA), except to the extent permitted by the Act where applicable.

26. Notices

26.1 A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:
- (a) Delivered personally;
- (b) Posted to their address when it will be treated as having been received on the fourth business day after posting;
- (c) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

27. General

27.1 The contents of the Terms and Conditions on the Quote reflecting the JDM Concreting Terms and Conditions constitute the entire agreement between the Contractor and the Client, and any previous agreements, understandings and negotiations, or other terms and conditions cease to have effect. These Terms apply to the exclusion of any other terms and conditions submitted by the Client, except where such terms and conditions are agreed and executed between the parties in writing.

27.2 These Terms may be executed in any number of counterparts, and all counterparts together make one instrument.

27.3 The failure, delay, relaxation or indulgence by the Contractor to enforce or exercise any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under these Terms.

27.4 If any provision of these Terms shall be invalid, void, illegal or unenforceable, then the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

27.5 These Terms and any contract to which they apply shall be governed by the laws of South Australia in which the Contractor has its principal place of business and are subject to the jurisdiction of the Courts in that state.

27.6 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

27.7 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.

27.8 The Client may only assign, charge or deal with its rights or obligations under these Terms to the extent of the written consent provided by the Contractor, which will not be unreasonably withheld.

27.9 The Client agrees that the Contractor may amend these Terms at any time. If the Contractor makes a change to these Terms, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide any Works to the Client.

27.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or epidemic (including quarantine restrictions and government directions) or other event beyond the reasonable control of either party.

27.11 The Client warrants that it has the power to enter into these Terms and has obtained all necessary authorization's to allow it to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.

27.12 Clauses which are expressed to survive termination, or which by necessarily implication must survive termination to give full effect to the clause, survive termination of this agreement.