Kennedy Contracting Ltd: Terms & Conditions

1. Definitions and acceptance

1.1 "We", "us", "Kennedy" means Kennedy Contracting Ltd. "You", "the Customer" means the person or entity accepting the quotation. "Works" means the work described in the quotation.

1.2 These Terms apply to every quotation, contract and invoice issued by us and prevail over any purchase order, tender conditions or terms you supply, unless we agree otherwise in writing signed by a director.

1.3 You accept these Terms by signing the quotation, confirming acceptance in writing (including email), paying the deposit, or permitting us to commence the Works.

1.4 If we have a separate written contract with you (for example NZS 3910 or a head contract subcontract agreement), that contract prevails to the extent of any inconsistency.

2. The quotation

2.1 The quotation is valid for 30 days from its date and may be withdrawn or amended at any time before acceptance.

2.2 All prices exclude GST unless stated otherwise. GST is charged in addition.

2.3 The quotation is priced to the drawings, specifications and site information identified in it. Where a document is superseded, amended or reissued after the date of the quotation, any resulting change in scope, quantity or method is a variation.

2.4 Quantities are subject to final measure and value. Items shown as provisional, rate-only or estimated are indicative and are remeasured on completion.

2.5 The quotation covers only what it expressly describes. Anything not listed is excluded, including (unless stated) council consent, inspection and corridor access fees; engineering design and producer statements; traffic management beyond a generic plan; dewatering; contaminated spoil; erosion and sediment control materials; drainage and sumps; retaining; survey set-out and as-builts; and works beyond the described area.

3. Deposit and payment

3.1 Where the quotation states a deposit, that deposit is payable before we order materials or commence the Works. We are not obliged to commence until it is received.

3.2 Unless the quotation states otherwise, we invoice on completion. On Works running longer than four weeks, or exceeding $50,000, we invoice monthly for work completed to date.

3.3 **Payment claims.** Every invoice we issue is a payment claim under the Construction Contracts Act 2002. If you dispute any part of a payment claim you must provide a payment schedule complying with section 21 of that Act within 5 working days of receiving the claim, stating the amount you propose to pay and your reasons for the difference. If you do not, the full claimed amount becomes due and payable on the due date and you may not later dispute it in recovery proceedings.

3.4 **Due date.** Payment is due (7 days private works) 20 days after the date of the payment claim, unless we agree different terms in writing before the Works commence.

3.5 Payment must be made in full without set-off, deduction or counterclaim, other than an amount properly withheld under a payment schedule issued under clause 3.3.

3.6 Where you are a residential occupier, the prescribed Construction Contracts Act information sheet is provided with every payment claim.

4. Late payment

4.1 Interest accrues on any amount not paid by the due date at 2% per month (24% per annum), calculated daily from the due date until payment is received in full.

4.2 An administration fee of $75 plus GST is payable on each invoice that becomes overdue, being our reasonable estimate of the cost of administering a default.

4.3 All costs we incur in recovering an overdue amount are payable by you. These include debt collection agency commission, credit reporting costs, and legal costs on a solicitor-and-client basis.

4.4 If any amount is overdue, or you fail to provide a payment schedule under clause 3.3, we may suspend the Works on 5 working days' written notice under section 24A of the Construction Contracts Act 2002. We are entitled to an extension of time and to recover the costs of suspension and remobilisation.

4.5 Amounts owed by a company may, at our option, be guaranteed personally by the director(s) signing acceptance. The guarantee is set out in the acceptance block.

5. Variations

5.1 A variation is any change to the scope, quantity, sequence, specification, finish, materials or method of the Works, and any latent condition under clause 6.

5.2 We will notify you of a variation and its likely cost before proceeding, except where the variation is required urgently for health and safety, statutory compliance, or to prevent damage to the Works.

5.3 Variations are charged at the rates in the quotation where applicable, or otherwise at our current daywork rates for labour, plant and supervision, plus materials at cost plus 27%.

5.4 Instructions given verbally on site by you or your representative are binding on you. We will confirm them in writing where practicable, but a variation is not invalid because it was not confirmed in writing.

5.5 Variations are invoiced with the next payment claim.

6. Ground conditions and underground services

6.1 The quotation is priced on the ground conditions disclosed in the documents identified in it and reasonably visible on inspection.

6.2 You must disclose to us, before work commences, the location of all underground services on the property, including private services not shown on beforeudig records: irrigation, private drainage, effluent lines, power and water to sheds or sleepouts, gas, dog fence and irrigation control cabling, and pool plumbing.

6.3 We will obtain beforeudig plans for network utility services and will exercise reasonable care and skill when excavating. Subject to that, damage to services you have not disclosed, or that are not shown on the records provided, is repaired at your cost.

6.4 Where we encounter a latent condition, including rock, unsuitable or soft subgrade requiring undercut, buried structures, buried waste, groundwater, or contaminated material, we will stop, notify you, and price the additional work as a variation before proceeding.

6.5 If asbestos or other contaminated material is encountered, we will stop work immediately and notify you. Identification, assessment, removal and disposal are your responsibility and cost, and we are entitled to an extension of time. This applies notwithstanding anything else in these Terms.

6.6 Spoil is priced as clean fill to a standard disposal facility. Classification, testing, and disposal of contaminated spoil are excluded.

7. Site access and conditions

7.1 You must provide clear, safe and unobstructed access to the site for trucks, concrete trucks, excavators and other plant for the duration of the Works, and provide water and power where required.

7.2 The quotation assumes concrete can be discharged directly from the truck within 3 metres of the pour. Pumping, barrowing, line pumps and additional labour caused by restricted access are variations unless allowed for in initial quotations.

7.3 Standing time for plant and crew caused by access restrictions, late supplier deliveries outside our control, or your instruction to stop is charged at our current hourly rates.

7.4 Movement of heavy plant and delivery vehicles over lawns, existing driveways, kerbs, footpaths, paving and services is unavoidable on most sites. Rutting and damage to those areas is excluded from the quotation unless reinstatement is listed as an item.

7.5 You must keep yourself, other occupants, children, pets and other trades clear of the work area while plant is operating and while concrete is being placed and cured.

8. Programme and delays

8.1 Any dates or durations given are estimates and are not of the essence. Time is not of the essence unless the quotation says so in express terms.

8.2 We are entitled to an extension of time and to recover any resulting costs where delay is caused by weather, ground conditions, supplier or subcontractor failure, utility or council delay, your acts or omissions, other trades, or any event outside our reasonable control.

8.3 We are not liable for any loss, cost or expense arising from delay, including holding costs, lost rent, or delay costs passed down from a head contract, except where we have expressly agreed liquidated damages in writing.

9. Concrete

9.1 Concrete is a natural product. Cracking, crazing, colour and shade variation, efflorescence, minor surface blemishes and variation in exposed aggregate density are inherent characteristics and are not defects.

9.2 We install control joints at spacings appropriate to the slab. Control joints manage but do not prevent cracking. Cracks occurring outside control joints, and cracks resulting from ground movement, settlement, tree roots, or loading beyond the design use, are outside our control and are not covered.

9.3 Finish tolerances are to NZS 3114 for the specified finish class. Where no class is specified, Class U is provided.

9.4 Concrete strength gains over time. Unless otherwise agreed, the Works must be kept free of foot traffic for 24 hours, light vehicle traffic for 7 days, and heavy vehicle or plant traffic for 28 days after placement. Damage caused by earlier loading is not covered.

9.5 In winter and shoulder-season conditions, accelerating admixtures, insulating blankets, revised pour times or curing compounds may be required to achieve proper curing. Where required, these are charged as a variation at cost plus 27%. We may postpone a pour where ambient conditions do not permit placement in accordance with NZS 3109, and clause 8.2 applies to the resulting delay.

9.6 Curing, sealing and ongoing maintenance after handover are your responsibility unless listed as an item.

10. Timber and other natural materials

10.1 Timber is a natural product. Shrinkage, swelling, warping, twisting, cupping, checking, splitting, resin bleed, knot movement, and colour and grain variation are inherent characteristics and are not defects.

10.2 Timber decking, fencing, retaining and pergola elements are supplied to the treatment level specified. Ongoing coating and maintenance are your responsibility.

10.3 Plants, turf and topsoil are living materials. Establishment depends on watering, drainage and aftercare. Unless a maintenance period is listed as a priced item, plant and turf establishment after handover is your responsibility.

11. Council approvals, traffic management and vehicle crossings

11.1 Unless listed as an item, obtaining and paying for building consents, resource consents, vehicle crossing approvals, corridor access requests, engineering approvals, inspection fees and bonds is your responsibility.

11.2 Vehicle crossing pricing is based on a generic Traffic Management Plan, standard site conditions and standard council requirements. Any cost arising from a site-specific TMP, STMS attendance beyond the allowance, council conditions, approvals, inspections, hold points, or changes required during construction, is a variation.

11.3 Where a council inspector or network utility requires work to be altered or added, that work is a variation.

12. Supplier cost movement

12.1 Our pricing is based on supplier fuel adjustment factor (FAF) and surcharge rates current at the date of the quotation. These are set by our concrete, aggregate and cartage suppliers, are variable, and are outside our control.

12.2 Where a supplier applies a FAF or surcharge movement during the Works, the movement is passed through to the contract price as a variation, supported by written confirmation from the supplier. We pass through the actual movement only, without markup.

12.3 Where the Works have not commenced within 90 days of acceptance for reasons outside our control, and our documented material or supplier costs have increased by more than 5%, we may

give you written notice of the increase with supporting evidence. You may then either accept the adjusted price or cancel the contract within 10 working days, in which case you pay only for work done and costs reasonably committed.

13. Health and safety

13.1 Both parties have duties under the Health and Safety at Work Act 2015. We are the PCBU in control of the work area for the duration of the Works and will manage the site accordingly.

13.2 You must tell us of any hazard you are aware of on the property, including asbestos, unstable ground, overhead lines, unsafe structures, and aggressive animals.

13.3 You and your visitors must comply with our site controls and must not enter the work area without our agreement.

14. Title and security interest

14.1 Title in all materials supplied by us remains with us until we have received payment in full of all amounts owing on any account. Risk passes to you on delivery to site.

14.2 These Terms create a security interest under the Personal Property Securities Act 1999 in all goods supplied and their proceeds. You agree we may register a financing statement on the PPSR, and you waive your right under section 148 to receive a verification statement.

14.3 Where materials are affixed to land, you grant us the right to enter the property on reasonable notice to inspect or, where lawfully entitled, recover unpaid goods.

15. Defects and warranties

15.1 We warrant our workmanship for 12 months from practical completion. Materials carry the manufacturer's warranty only, which we will pass through to you.

15.2 You must notify us of any alleged defect in writing within 14 days of becoming aware of it, and must give us reasonable access to inspect and remedy it. We are not liable for the cost of remedial work carried out by others without giving us that opportunity.

15.3 The warranty does not cover: fair wear and tear; the inherent characteristics of concrete and timber described in clauses 9 and 10; damage from ground movement, settlement, subsidence, seismic events or tree roots; damage from loading beyond design use; damage caused by you or others; or failure to maintain the Works.

15.4 Where the Works are residential building work, the implied warranties in Part 4A of the Building Act 2004 apply and are not limited or excluded by this clause.

16. Consumer rights

16.1 Nothing in these Terms limits or excludes any right you have under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or the Building Act 2004 that cannot lawfully be limited or excluded.

16.2 Where you acquire the Works for the purposes of a business, the Consumer Guarantees Act does not apply and you agree that sections 9, 12A and 13 of the Fair Trading Act do not apply. You acknowledge this exclusion is fair and reasonable, both parties are in trade, and the contract is for business purposes.

17. Liability

17.1 Subject to clause 16, our total liability arising from the Works, whether in contract, tort, equity or otherwise, is limited to the lesser of the contract price and the amount recoverable under our public liability insurance.

17.2 Subject to clause 16, we are not liable for indirect or consequential loss, including loss of profit, loss of rent, holding costs, loss of use, or liability you incur to a third party.

17.3 We hold public liability insurance of $2,000,000. Insurance of the property, the existing structures, and the works in progress against fire, flood, storm, theft and vandalism is your responsibility.

18. Cancellation

18.1 If you cancel after acceptance, you must pay for all work completed, materials ordered or supplied, restocking charges, and mobilisation and demobilisation costs reasonably incurred.

18.2 We may cancel or suspend the contract if you fail to pay, fail to provide access, become insolvent, or breach these Terms and do not remedy the breach within 5 working days of written notice.

19. Credit and privacy

19.1 You authorise us to obtain credit information about you from credit reporting agencies and trade referees, and to disclose information about your account conduct to those agencies, including default information if an amount remains unpaid.

19.2 We collect, hold and use personal information in accordance with the Privacy Act 2020 for the purposes of providing the Works, credit assessment and debt recovery.

20. Disputes

20.1 If a dispute arises, either party may give written notice of it. The parties will meet within 10 working days to attempt to resolve it in good faith.

20.2 If unresolved within 20 working days, either party may refer the dispute to mediation, or to adjudication under the Construction Contracts Act 2002. Nothing in this clause limits either party's right to adjudicate at any time.

20.3 A dispute does not entitle you to withhold payment of any amount not properly withheld under a payment schedule.

21. General

21.1 These Terms are governed by New Zealand law and the parties submit to the jurisdiction of the New Zealand courts.

21.2 If any clause is unenforceable, it is severed and the remainder continues in effect.

21.3 We may subcontract any part of the Works.

21.4 Failure to enforce any term is not a waiver of it.