SCREEDPLEX TERMS OF TRADE

1. CONTRACT

1.1 Unless otherwise agreed in writing, these Terms govern all quotations submitted by, all orders placed with, and all contracts entered into by **Screedplex Pty Ltd (ABN 18 681 116 718)** (**we, us, our**) in respect of the supply, delivery or installation of materials (including sand, cement, binders, additives or fibre), screed and performance of associated work including the mixing and supply of screed and pumping services (**Screed Services**) that we provide to the client or customer named in a quotation or Customer Credit Application (**Client, you, yours**).

1.2 A contract will be formed between you and us (**Contract**) on the first of the following events:

(a) you issue a purchase order requesting us to supply Screed Services to you or a third party;

(b) you instruct us (whether verbally or in writing) to supply the Screed Services after a quotation has been provided to you;

(c) you pay any required deposit;

(d) we commence supply of Screed Services to you; or

(e) you sign and return a copy of a Customer Credit Application or quotation attaching or referring to these Terms and Conditions.

1.3 Each of the following documents and information forms part of and is included in the Contract, taking precedence in the following order (**Contract Documents**):

(a) any quotation, agreed price or schedule of rates;

(b) Customer Credit Application;

(c) these Terms of Trade;

(d) any other documents referenced by or attached to the quotation or Contract; and

(e) a purchase order that you issue to us in connection with supply of Screed Services.

1.4 If there is any inconsistency or conflict between the Contract Documents and any terms appearing in your purchase order or other communication, then the Contract overrides your terms. Your acceptance of the Screed Services is an acceptance of the terms of the Contract.

2. TRUSTEE CUSTOMERS

2.1 If you enter this Contract as the trustee of a trust, you warrant in your capacity as trustee that:

(a) the trust exists and you are its sole trustee or are authorised by any other trustees, and have authority to enter the Contract;

(b) you have a right to be fully indemnified out of the assets of the trust in respect of your obligations under this Contract;

(c) the assets of the trust are sufficient to satisfy all claims under this Contract;

(d) you will take any action necessary to ensure that the trust continues to have sufficient assets to satisfy any claim by us in connection with the Contract; and

(e) you are liable in your own right for the credit account.

3. SUPPLY OF SCREED SERVICES ON CREDIT

3.1 If we agree to supply Screed Services to you on credit, you acknowledge and agree that:

(a) we may request at any time that your directors (including any new directors) provide personal guarantees to us guaranteeing the performance of your obligations under this Contract, and all credit under the Contract may be suspended until you comply with that request;

(b) you must give us written notice of any change in ownership or any other change in your details; and

(c) the terms of this Contract apply to our supply of all Screed Services to you unless we have expressly entered into another written agreement with you that confirms these terms do not apply.

3.2 As security for the performance of your obligations under the Contract including punctual payment of all invoices, you:

(a) consent to us registering any security interest that we may have under this Contract in accordance with the *Personal Property Securities Act 2009* (Cth);

(b) consent to the lodging of a caveat over any real property you own;

(c) irrevocably appoint us as your attorney for the purpose of executing, registering and enforcing any securities created under clause 3.2; and

(d) agree to pay all legal costs we incur to protect, recover under and/or enforce the securities created under clause 3.2.

3.3 We may refuse to extend any further credit to you at any time and for any reason in our absolute discretion. Approval of your Credit Application does not require us to provide any particular amount of credit to you at any time.

3.4 You warrant that you are solvent and can pay your debts as they fall due and that no steps have been taken to place you into bankruptcy, voluntary administration, liquidation, receivership or management.

4. OUR OBLIGATIONS

4.1 We will supply the Screed Services:

(a) in accordance with the Contract and any Contract Documents;

(b) diligently, in a proper and tradesman-like manner using trained and qualified personnel; and

(c) in accordance with relevant laws, regulations and standards.

5. YOUR OBLIGATIONS

5.1 You must:

(a) pay us the price for the Screed Services as stated in the quotation or tax invoice or otherwise notified to you (the **Price**);

(b) obtain any approvals required for us to supply the Screed Services;

(c) promptly provide us with any information or directions that we reasonably request from you;

(d) ensure that the specification of screed that you order from us complies with relevant Australian standards and is suited to the purpose for which you require it and all other intended purposes;

(e) warrant the accuracy of all information, drawings, designs and specifications that you provide to us, and agree that we may rely on that accuracy;

(f) ensure that you and any site named in the quotation or purchase order (**Site**) comply with all relevant workplace health, safety and environment laws;

(g) ensure that we have clear, unobstructed access to the Site to the extent necessary to supply the Screed Services;

(h) provide appropriate traffic management controls, including signage and walkways;

(i) warrant the suitability and structural integrity of the Site and any structure or substrate on which the Screed Services will be performed;

(j) warrant that all access points are capable of accepting the weight of fully loaded trucks and vehicles;

(k) arrange for and provide us with all necessary Site inductions, at your cost;

(l) procure and provide to us any client-supplied materials, facilities and equipment agreed and/or listed in the quotation; and

(m) take measures to support efficient drying of the screed and to protect the screed during curing from weather and other factors such as damage caused by passage of people or equipment over the screed before it has cured.

6. RISK AND TITLE

6.1 Risk in the Screed Services passes to you on delivery.

6.2 Title in the Screed Services passes to you on full payment of the Price.

7. PAYMENT

7.1 We will claim payment of the Price by submitting tax invoices to you on a weekly basis, unless otherwise agreed in writing.

7.2 Each invoice will set out details of:

(a) if the Price is to be calculated based on quantity, the quantity of the Screed Services supplied by us in the period to which the invoice relates;

(b) the amount that we claim for payment by you for the Screed Services; and

(c) any other amount arising out of the Contract that we claim for payment, including any reimbursable expenses.

7.3 On receipt of a tax invoice from us, you must pay the total amount invoiced by the time stated in the invoice, or if no time is stated, within 7 days of the date of the invoice.

7.4 Any amount that is not paid within 7 days of the date of the invoice may attract interest, without notice to you. Interest will be calculated on the daily balance which is unpaid until the date of payment at the rate of 12% per annum.

7.5 Unless expressly stated to the contrary, the amount of payment for any taxable supply under this Contract has been calculated exclusive of goods and services tax and will be increased by the amount of any goods and services tax.

7.6 If a quotation or other communication states an estimate of quantity or Price, the estimate must not be interpreted as a lump sum, guaranteed quantity or cost, or cap on the Price. Unless a lump sum is expressly quoted, the Price will be calculated on the basis of actual quantities of Screed Services supplied.

7.7 Where we have expressly quoted a lump sum Price, that Price is calculated on the basis of measurements and anticipated quantities that you have communicated to us at the time of pricing. If those measurements are incorrect or the volume of screed actually supplied increases for reasons outside of our control, we reserve the right to charge for additional materials or Screed Services.

7.8 If at any time a payment is not made in accordance with this Contract, we may immediately suspend the provision of credit and the supply of all Screed Services until we receive payment.

7.9 We reserve the right to assign our entitlements to payment under this Agreement and/or to employ the services of a debt collector if any fees remain unpaid 7 days after they were due.

7.10 If you do not pay a debt due to us, we may require you to pay part or all of our costs and expenses associated with ensuring payment of that debt. This may include commission and fees payable to a mercantile collection agent or solicitor.

7.11 Time is of the essence in respect of your obligation to pay any amount that you owe us under the Contract.

8. VARIATIONS

8.1 Where practically possible, we will carry out variations to the Screed Services (including changes to timing, product, specification or quantity) after we have reached agreement with you regarding:

(a) the scope of the varied Screed Services;

(b) the price impact of the Variation; and

(c) any impact of the Variation on the date for delivery or duration of services.

8.2 Notwithstanding clause 8.1, we may change the Price:

(a) if additional Screed Services are required due to the discovery of unknown or unexpected conditions, including poor weather conditions, Site access limitations, availability of machinery, workplace safety hazards, incomplete work by other contractors or design changes; or

(b) if the cost of materials or labour increases for reasons that are beyond our reasonable control.

8.3 Unless we agree upon the price for a variation, we will value the variation as follows:

(a) if the Contract or quotation prescribes specific rates or prices, on the basis of those rates or prices plus a 20% margin;

(b) if clause 8.2(a) does not apply, on reasonable rates or prices plus a 20% margin; and

8.4 If the Price is a fixed lump sum, it will be adjusted by the price of the variation.

8.5 We will claim the adjustment or any additional charges in our next invoice following supply of the varied Screed Services.

9. EXTENSION OF TIME

9.1 We will be entitled to an extension of the date for completion or Contract duration if the progress of the Screed Services is delayed by any of the following:

(a) variations to the Screed Services, including the time for reaching signed agreement on a variation;

(b) inclement weather or Site conditions resulting from inclement weather;

(c) an act or omission by you, your agents, representatives, employees, other contractors engaged by you or third parties present at the Site;

(d) errors, ambiguities or inconsistencies in information or specifications that you issue to us;

(e) a shortage or delay in the delivery of materials or a shortage of the labour required for the Screed Services, that was outside of our reasonable control; or

(f) any other matter, cause or thing that is beyond our reasonable control.

9.2 Where a delay arises due to causes outside of our reasonable control:

(a) we are entitled to be paid for any increase in the costs of supplying the Screed Services arising out of the delay in accordance with clause 8.3; and

(b) the cost will be added to the Price and included in our next invoice.

10. INSURANCE

10.1 We must each effect and maintain the following insurance policies:

(a) any insurance required by law, including workers' compensation insurance; and

(b) public liability insurance.

11. LIABILITY

11.1 You agree and acknowledge that the curing time for screed may be affected by environmental factors including temperature and humidity, and we are not liable for the length of time required for curing.

11.2 You indemnify us and our personnel against any loss, damage, injury or death arising from any act or omission of either of us in any way related to this Contract, the Screed Services, except to the extent that such loss, damage, injury or death is caused or contributed to by our negligent acts or omissions.

11.3 To the extent permitted by law, we accept no liability for loss or damage resulting from any of the following reasons:

(a) an act or omission by you, your agents, representatives, employees, other contractors engaged by you or third parties present on the Site;

(b) cracking or delamination of screed or strength or curing failures;

(c) fair wear and tear or a failure to maintain the Screed Services;

(d) loss or damage resulting from your failure to properly maintain or store the Screed Services, or from you using the Screed Services for any purpose other than that for which they were designed;

(e) defects or failures in client-supplied materials, facilities or equipment;

(f) damage to the Site, including damage to pathways, driveways or concreted, paved or grassed areas;

(g) errors, omissions, inaccuracy or defects in any information that you provide to us; and

(h) environmental factors that affect the Screed Services, including inclement weather.

11.4 To the extent permitted by law, our liability to you for any loss or damage connected with a breach of this Contract, or in tort, or under an indemnity or for any other common law or statutory cause of action arising out of this Contract will be limited to the lesser in value of reperforming the Screed Services or the Price.

11.5 We will not be liable to you for any indirect or consequential loss, damage, cost or liability of any kind (including negligence) that you suffer in connection with the performance or non-performance of this Contract, or any economic loss, loss of revenue, profit or anticipated profit, loss of contract, loss of production, loss of product, loss of use of property or business interruption.

11.6 Clause 11 survives termination of the Contract.

12. TERMINATION

12.1 This Contract may be terminated at any time by written agreement between us.

12.2 Either of us may terminate this Contract:-

(a) if the other is in default of the terms and conditions of this Contract and fails to remedy the default within 7 days after receiving written notice of the default; or

(b) immediately if the other party files for bankruptcy, enters into liquidation, is acquired by another entity or becomes insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth).

12.3 We may terminate this Contract for our convenience at any time, by written notice to you.

12.4 If this Contract is terminated in accordance with this clause 12, you must pay us for:

(a) all Screed Services delivered up to the date of termination;

(b)

(c) any reasonable costs arising from the termination, including demobilising from Site; and

(d) if we terminate the Contract under clause 12.2, the cost of materials reasonably ordered or labour engaged (which we are liable to accept and pay for) in anticipation of carrying out the Screed Services under this Contract.

12.5 Termination of this Contract does not affect or prejudice any of our rights accrued before the termination, or release either party from obligations under the Contract that by their nature survive termination.

13. DISPUTE RESOLUTION

13.1 If either of us has any difference or dispute in connection with the Contract, that party must give the other party written notice of the dispute within 7 days of becoming aware of the circumstances giving rise to the difference or dispute, setting out adequate details.

13.2 If a notice of dispute is issued under clause 13, we may suspend the supply of the Screed Services until the dispute is resolved. Suspension of the Screed Services under this clause 13 does not entitle you to delay any outstanding payment.

13.3 Within 7 days of the issue of a dispute notice, senior representatives of each of us must meet and negotiate in good faith to resolve the dispute.

13.4 If the dispute cannot be resolved after the meeting under clause 13.3, either of us may refer the matter for mediation conducted by a mediator agreed between us, or appointed by the Resolution Institute, subject to the Resolution Institute Rules for Mediation. The costs of the mediator must be borne equally between us. The chosen mediator may determine relevant procedures for the mediation but will not have the power or authority to make any other determination in relation to the dispute.

13.5 If the dispute cannot be resolved within 14 days of the mediation referred to in clause 13.4, either of us may commence legal action.

13.6 Nothing in this clause prevents:

(a) us commencing action to recover overdue payments; or

(b) either of us seeking interim or interlocutory relief.

14. GENERAL

14.1 This Contract is the entire agreement between us with respect to its subject matter and supersedes all prior oral or written representations and agreements.

14.2 This Contract can only be amended in writing signed by both of us.

14.3 You may not assign your rights or obligations arising under this Contract without our prior written consent.

14.4 Nothing in this Contract creates a relationship of employer and employee, principal and agent, partnership or joint venture between us or between us and any third party including your employees, subcontractors or other personnel.

14.5 A waiver by either of us of a breach of this Contract does not constitute a waiver of any later breach of the same or any other provision.

14.6 If any part of this Contract is invalid or unenforceable, that part will be deemed deleted to the extent necessary. The remaining provisions of the Contract will remain in full force and effect.

14.7 This Contract is governed by the laws of Western Australia. We both submit to the non-exclusive jurisdiction of the courts of Western Australia.