

# AMERICAN CONCRETE PUMPING INC. - TERMS AND CONDITIONS

These Terms and Conditions (“**Agreement**”) by and between American Concrete Pumping Inc. (“**ACPI**”) and the Client (Signatory on front page) are made a part of and are incorporated by reference into the work order by and between the parties hereto and the parties hereby agree as follows:

**1. Indemnification:** The Client agrees to indemnify, defend, and save ACPI, its employees and agents harmless from all claims for death or injury to persons, including ACPI’s employees, of all loss, damage or injury to property, including the equipment, arising directly, indirectly, or in any manner out of Client’s work, use, operation and possession of the equipment. Client’s duty to indemnify hereunder shall include all costs or expenses arising out of all claims specified herein, including all court and/or arbitration costs, filing fees, attorneys’ fees and costs of settlement. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount of type of damage, compensation or benefits payable by or for the Client under worker’s compensation, disability or other employee benefit acts. The parties hereby further agree that this limitation bears a commercially reasonable relationship to the main contract and is incorporated as part of the project specifications or bid documents, if any, and further, that the amounts of the indemnification limitation specified herein bear a commercially reasonable relationship to the contract in light of the risks to person and property which may arise from or relate to the project and work contemplated by this Agreement. ACPI and Client expressly acknowledge and agree that these indemnification provisions pertain only to claimed damages arising from this Agreement or its performance and, also, that these provisions shall not require Client to indemnify ACPI for damages to persons or property caused in whole or in part by any act, error, or omission of a party other than: (a) Client; (b) Client’s contractors, subcontractors, sub-subcontractors, material men or agents or any tier or their respective employees; or (c) ACPI or its officers, directors, agents or employees provided, however, such indemnification shall not include claims of, or damages resulting from gross negligence or willful, wanton, or intentional misconduct of the ACPI or its officers, directors, agents or employees, or for statutory violations or punitive damages except and to the extent the statutory violations and punitive damages are caused by or result from the acts, errors or omissions of the Client or any of Client’s contractors, subcontractors, sub-subcontractors, material men or agents of any tier or their respective employees. This provision is separate and distinct from any other provision or paragraph in this Agreement, including any provision or paragraph concerning partial indemnification or procurement of insurance.

**2. Insurance:** The Client agrees to purchase the following insurance coverages prior to the equipment’s arrival on the job site. The Client shall procure the following coverages for ACPI: a) worker’s compensation and employer’s liability insurance, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b) primary non-contributory commercial general liability insurance on an occurrence basis, including bodily injury and property damage coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c) excess/umbrella non-contributory insurance in the amount of \$5,000,000 and Client’s primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of ACPI’s insurance policies; d) inland marine/all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of the equipment, including any boom or job, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God occurring during the rental term; e) the ACPI to be named as an additional insured on all liability insurance policies, including excess/umbrella policies (ISO Form CG 20 10 10 01 and ISO CG 20 37 10 01 must be used), and Client shall provide all insurance certificates to ACPI when requested; f) all of ACPI’s, and anyone ACPI is required to insure, policies are excess over all of Client’s policies. To the extent that the Client may perform under this Agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the ACPI’s right to maintain any breach of contract action against the Client. The Client understands that this waiver shall bind its insurers of all levels, and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this lease.

**3. Operation of Equipment:** It is expressly agreed by and between the parties hereto that the equipment and all persons operating the equipment at the job site are under the exclusive jurisdiction, supervision and control of Client under this Agreement. It shall be the duty of Client to give specific instructions and directions to all persons operating the equipment at the job site. Client agrees to provide competent and experienced personnel to direct the operation of the equipment at the job site.

**4. Client’s Responsibilities:** Client to provide a pumpable concrete mix, in terms of gradation of aggregate and batching of concrete, for the designated pumping equipment. Client to provide reasonable scheduling of concrete delivery, labor force for set up of system, handling of pumping system while placing, grout for priming system, a suitable place for cleanup of system and pump, a suitable roadway and reasonable accessibility to set up site. Otherwise, Client assumes all responsibility for the removal of pump from job site if tow trucks, wreckers’ trucks, or etc. are required due to weather, road or job site conditions. It is the Client’s responsibility to notify in advance a change of schedule to ACPI. Hoisting of lines above ground level, labor to set-up and clean up system are the responsibilities of the Client.

**5. Delays Stoppages and Backcharges:** (A) No backcharges shall be charged against ACPI for delays or stoppage which result from (a) breach of Client of any term or provision of this Agreement; (b) unworkable mixes; (c) mechanical breakdown or failure of pumping equipment that is caused by difficult or unworkable mixes; (d) for the first (1) one hour of any other mechanical breakdown or failure of the pumping equipment; (e) late arrival for a scheduled afternoon pour; (f) damage to asphalt; (g) strikes, lockouts, acts of God, adverse weather or other causes beyond the reasonable control of ACPI; (h) damage to property beyond curb line; or (i) loss of concrete resulting from addition of water. (B) Backcharges for concrete finisher overtime labor costs, if otherwise allowable, shall not exceed the actual time of the delay or stoppage of the pumping equipment less the first one (1) hour of such breakdown or failure, as above provided. (C) Backcharges for loss of concrete, if otherwise allowable, shall accrue only for that amount of concrete lost which exceeds five percent (5%) of the total volume of concrete pumped in that one (1) day period. (D) In no event shall backcharges accruing exceed the total price chargeable by ACPI for that one (1) day period. (E) Backcharges and claims for damages resulting from delay due to the fault of ACPI shall be deemed waived by Client unless claim is made in writing to ACPI within forty-eight (48) hours from the beginning of the delay.

**6. Terms of Payment:** Client shall pay ACPI all payments within thirty (30) days from the date of invoice or on or before the tenth (10<sup>th</sup>) day of the month following the month in which the work was performed, whichever is earlier. All sums not paid when due shall bear interest at the rate of 1.5% per month from the date until paid or the maximum legal rate permitted by law, whichever is less; and all cost of collection, including reasonable attorney’s fees shall be paid by Client. ACPI, at its option, may require Client to make payments in advance.

**7. Conditions:** The Client shall indemnify and hold harmless the ACPI and all its agents and employees from and against all claims, damages losses, expenses, including attorney’s fees, arising out of or resulting from the actions caused by concrete hose whipping. The Client hereby agrees that it will assume all responsibility for the ground or soil conditions in the area where the equipment is to be stored, parked or operated. The Client shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the equipment while in operation or otherwise. If the ground or soil condition is such that it cannot support the equipment, the Client shall take all necessary measures to ensure that these conditions are remedied prior to the equipment being placed on that ground or soil. These measures include, but are not limited to, the provision of proper shoring or cribbing or other measures. Client assumes all responsibility to protect the equipment and persons in or around the equipment from the danger of power lines. Client shall not expose the equipment or any persons in or around such equipment to the danger of energized power lines. All power lines in the work area shall be identified prior to the work beginning. All power lines are to be de-energized prior to the equipment being operated in or around such power lines. Client shall contact the local electric utility or other such authorized entity to arrange to have the power lines de-energized prior to beginning work. Even if power lines are de-energized, Client shall keep the equipment clear of such power lines at the distances required by OSHA, ANSI and any other safety regulations or standards.

**8. Access:** Client acknowledges that the pumping equipment is heavier than most construction equipment and requires a suitable load bearing surface to support the load. ACPI accepts no liability for damage to parking lots, road surfaces, underground utilities and all other surfaces the equipment may have to travel, park or be operated upon.

**9. Cancellations:** Client agrees to notify ACPI of the cancellation of any scheduled pour before 4:00 PM the preceding workday or shall be liable for and shall pay the crew wages at the current rate paid by ACPI. If the equipment arrives at the jobsite and is cancelled, Client agrees to pay a cancellation charge equal to the daily fee.

**10. Miscellaneous:** (A) In the event this Agreement has been executed on the reverse side by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the company for which the individual has signed this Agreement represent to ACPI or that the individual signing has full authority to execute this agreement on behalf of said corporation or other business entity. (B) Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (i) delivered personally, (ii) sent by a recognized overnight carrier, or (iii) sent by certified mail, postage prepaid, addressed to a party at his, her or its address set forth in this Agreement, or to such other address designated by notice pursuant to this section. (C) This Agreement contains the entire agreement among the parties with respect to the subject matter of this Agreement. (D) No amendment to this Agreement shall be effective unless made in a writing duly executed by all parties hereto. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement. (E) No failure of a party to exercise, and no delay by a party in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. (F) If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the parties. (G) This Agreement may be by email, facsimile or other form of electronic signature, in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. (H) This Agreement shall be governed by and construed and enforced according to the internal laws of the State of New York, without reference to principles of conflicts of laws. Any legal action, suit or proceeding arising out of or relating to this Agreement, may only be instituted in a State or Federal Court in the State of New York, County of Westchester, and each party irrevocably submits to the jurisdiction of any such Court in any such action, suit or proceeding.