

Composite Slabs and Beams Software Licence Agreement

1. DEFINITIONS

1.1 In this licence:

“Licence” means this software licence as may be varied by us from time to time.

“Confidential Information” includes the source code in relation to the Software and any information relating to our business or financial affairs, trade secrets, specialised know-how or practices or our clients or customers. It does not include any information which is already in the public domain at the time it is disclosed to you, or becomes available to the public domain other than via breach of this Licence, or was received by a third party who had the legal right to disclose the information, or was already in the recipient’s possession prior to being disclosed to the recipient by you.

“Intellectual Property Rights” means any patent, trade mark, service mark, copyright, moral right, design, know-how and any other intellectual or industrial property rights anywhere in the world whether or not registered.

“Software” means the web based HERA Composite Beam and Slab design software tool to AS/NZS 2327: 2017, and includes any modifications, improvements or upgrades to that software.

“We”, “us”, “our” shall mean NZ Heavy Engineering Research Association Incorporated and any of our directors, agents and employees.

“You” and “your” shall mean the person or entity using the Software.

2. ACCEPTANCE

2.1 By using the Software, you accept and agree to be bound by this Licence. We may vary this Licence at any time by giving you 15 days’ notice. If you do not agree with any change to this Licence, your sole remedy is to terminate your use of the Software.

3. TERM

3.1 This Licence is effective until terminated. You may terminate it at any time by deleting your account access to the Software together with notifying us of your intent to terminate access. It will also terminate immediately without notice to you if you fail to comply with any term or condition of this Licence. Upon termination, you agree to immediately delete your access credentials to the Software.

4. USE OF THE SOFTWARE

4.1 In consideration of you agreeing to the terms set out in this Licence, we grant you a non-transferable and non-exclusive right to use the Software on an “as is” basis.

4.2 You must only use the Software for the purpose for which we supply it to you.

4.3 You may:

4.3.1 use the Software in a single organisation and solely as an end user;

4.3.2 save the Software output in machine-readable or printed form for backup or as part of a design;

4.3.3 modify the Software output or merge it into another program for your use on your machine. Any portion of this Software output merged into another program will continue to be subject to the terms and conditions of this Licence;

4.3.4 transfer the Software access to another party within your organisation if the other party agrees to accept the terms and conditions of this Licence having previously received a copy of the Licence. All materials referred to above not transferred must be destroyed.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights in the Software and any other works provided in any form whatsoever to you by us or accessible to you because of your entry into this Licence are and remain in our ownership.
- 5.2 You acknowledge no Intellectual Property Rights in the Software will pass to you and agree that you shall not contest or challenge the ownership of the Intellectual Property Rights in the Software.
- 5.3 You must reproduce and include the copyright notice on any copy, modification or portion of this Software merged into another program.
- 5.4 You may not use, copy, modify, or transfer the Software, in whole or in part, except as expressly provided for in this Licence. Nor may you disassemble, decompile or reverse engineer the Software.

6. INDEMNITY

- 6.1 **You indemnify us against any actions, proceedings, losses, damages, liabilities, claims, costs and expenses including fines, penalties, legal (on a solicitor to own client basis), debt collection and other professional costs on a full indemnity basis that we or any of our directors, agents or employees incurs or suffers as a direct or indirect result of any breach by you of this Licence and/or your use of the Software.**

7. LIMITATIONS AND EXCLUSIONS

7.1 You acknowledge and agree that:

- 7.1.1 **the Software is to be used to assist with your design of composite beams and slabs in accordance with design standard AS/NZ 2327:2017;**
- 7.1.2 **all designs should be separately calculated and it is imperative that the final calculation is not taken as absolute and guaranteed unless you have analysed, verified and assessed the design in its entirety and you are satisfied with the design;**
- 7.1.3 **any designs derived from the Software must have checking procedures placed upon them to ensure that you are satisfied with, and fully understand, the design prior to presentation to your client and/or building consent authority;**
- 7.1.4 **to the maximum extent permitted by law, we shall not be responsible or liable, whether in contract, tort, negligence or otherwise, for any loss or damage of any kind whatsoever, including, without limitation, consequential losses, incurred by you or any other person due to your use of the Software;**
- 7.1.5 **the Software is provided "as is" without warranty of any kind, either express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.**
- 7.1.6 **we do not warrant that the functions contained in the Software will meet your requirements or that the operation of the Software will be uninterrupted or error free. The entire risk as to the quality and performance of the Software is with you. If the Software is defective, you assume the entire cost of all necessary servicing, repair or correction;**
- 7.1.7 **you agree that you have acquired the Software for business purposes and nothing in the Consumer Guarantees Act 1993 will apply to this Licence; and**
- 7.1.8 **use of the Software does not constitute the provision of advice by us.**

8. CONFIDENTIALITY

- 8.1 You agree that any Confidential Information received by you under this Licence shall remain confidential between the parties and shall be used only for the purposes of this Licence.
- 8.2 Any Confidential Information received by you under this Licence shall not be disclosed to any third party for any reason other than is necessary to fulfil your obligations under this Licence and otherwise as may be required by law.

9. TERMINATION

- 9.1 You may terminate your use of the Software and this Licence by giving notice in writing to us at any time.
- 9.2 We may terminate your use of the Software and this Licence at any time for any reason by giving you 15 days' notice in writing.
- 9.3 You agree that all of your obligations in this Licence are essential terms.
- 9.4 Following termination of this Licence you will immediately cease use of the Software and shall return all Confidential Information in your possession to us.

10. GENERAL

- 10.1 No failure by us to exercise any power given to us under this Licence or to insist upon strict compliance by you with any obligation under this Licence and no custom or practice of the parties at variance with the terms of this Licence and no waiver of any particular default by you shall constitute any waiver of any of our rights or your obligations under this Licence.
- 10.2 We will not be liable for any failure to fulfil our obligations under this Licence to the extent that such failure arises from any cause reasonably beyond our control (including any failure by us to provide the Software otherwise than in connection with any act or omission by us, strikes, lockouts, riots, acts of war, epidemics, governmental interference, fire, communication line failures, equipment failures, power failures or earthquakes or other natural disasters).
- 10.3 Clauses 6, 7 and 9 shall survive the termination of this Licence.
- 10.4 If any term or provision (the "offending provision") of this Licence shall be declared or become unenforceable, invalid or illegal, the other provisions of this Licence shall remain in full force and effect as if they had been executed without the offending provision appearing and the offending provision shall nonetheless be enforceable and binding to the fullest extent permitted by the applicable law.
- 10.5 Your rights under this Licence are personal to you and you shall not assign, convey, subcontract, sublicense or delegate any of your rights, duties or obligations under this Licence without our express prior written consent.
- 10.6 This Licence and every matter arising from or in any way connected with the subject matter of this Licence shall be governed exclusively by the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand over all such matters.