

# CONDITIONS OF QUOTATION & SUPPLY

## 1. DEFINITIONS AND INTERPRETATION

"**Australian Consumer Law**" means Schedules 1 and 2 of the Competition and Consumer Act 2010 (Cth) and any other relevant provisions contained in that Act.

"**Client**" means the customer named on the quotation, and if no customer is named, the customer to whom Work is supplied.

"**Company**" means Allens Asphalt Pty Ltd or the Boral entity identified on the face of this quotation.

"**Conditions**" means these conditions of quotation and any additional matters prescribed on the face of this quotation.

"**Consequential Loss**" means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of consequential, special, indirect, punitive or exemplary loss or damages, however it arises (including as a result of negligence).

"**includes**" or "**including**" means includes or including without limitation.

"**Intellectual Property**" means registered and unregistered rights in relation to present or future copyright, trade marks, designs, know-how, patents, confidential information and moral rights.

"**Loss**" means any liability, however it arises (including as a result of negligence) and includes any loss, claim, damage, demand, injury or death and a fine or penalty imposed by a statutory or other authority.

"**Pavement**" means ground conditions or road base as applicable at the Site prepared by the Client.

"**Rates**" means the unit rate shown on the face of this quotation, or otherwise used to calculate the prices in the quotation.

"**Site**" means the location for the performance of the Work specified on the face of this quotation.

"**Sub-surface**" means all matter beneath the Pavement, including soil, rock, pipes, cabling and trenches and services.

"**Work**" means the materials or the materials and services to be supplied as described on the face of this quotation.

## 2. AGREEMENT

(a) Unless otherwise agreed in writing, the agreement between the Company and the Client comprises the following documents only (in order of precedence to the extent of any inconsistency between them):

- (i) these Conditions;
- (ii) any quotation;
- (iii) Credit Application (to the extent completed by the Client);
- (iv) Credit Guarantee (to the extent applicable),

and the agreement excludes:

- (v) any prior quotation, or
- (vi) the terms and conditions on the back of any delivery docket issued by the Company to the extent inconsistent with these Conditions;
- (vii) any purchase order, delivery receipt, procurement document or similar (including terms and conditions on the back of such documents) issued by the Client from time to time (including any document post-dating the quotation) to the extent inconsistent with these Conditions.

(b) The Client acknowledges that it has not relied on any representation, inducement, warranty or promise which is not set out below.

(c) The Conditions may only be varied by both parties agreement in writing.

## 3. VALIDITY

(a) This quotation is an offer open to acceptance by the Client within 30 days from the date on the quotation and any such acceptance must be on the basis that Work is started within 3 months of the date of the quotation.

(b) The offer is made subject to the Client meeting Boral Limited credit approval requirements.

(c) The Client's written order to commence the Work or commencement of Work by the Company constitutes acceptance of the offer.

## 4. POINT OF SUPPLY

(a) This quotation is based on all materials including, without limiting the generality hereof, all bitumen, bitumen emulsion, fluxes, additives, asphalt, aggregates and all other products necessary for the completion of the Work, being available from the Company's normal point of supply in respect to the locations of the Work as reasonably determined by the Company.

(b) Should conditions beyond the control of the Company necessitate supply from any other point of supply, the Company shall give notice of same to the Client prior to carrying out the Work in question if the Company seeks to claim any resultant increase in cost from the Client.

(c) The Client may accept the resultant increase (in which case, the increase will apply in addition to the Rates) or terminate the agreement (in which case, clause 20(c), (d) and (e) shall apply).

## 5. EXTENT OF WORK

(a) This quotation is based on supply of the full range of Work performed at the Site.

(b) If the Client changes the quantities supplied or location of the Site from the quotation, the Company reserves the right to adjust the Rate, and the Client may accept the adjusted Rate or not proceed.

## 6. BASIS OF PAYMENT

(a) The Work will be paid for by the Client at the Rates according to the actual quantities supplied as shown on the delivery docket or spray sheet.

(b) The Client acknowledges that the Rates are based on bitumen prices,

material prices, labour rates, rail haulage rates and road haulage rates applicable as at noon on the date shown on the face of the quotation and the Client further acknowledges that the Rates are subject to escalation in such prices and rates as shall occur between the date shown on the face of this quotation and the date of the Work.

(c) The Company shall give notice of any escalation to the Client prior to carrying out the Work in question if the Company seeks to claim any price escalation from the Client.

(d) The Client may accept the escalation (in which case, the escalation will apply in addition to the Rates) or terminate the agreement (in which case, clause 20(c), (d) and (e) shall apply).

(e) The Client acknowledges that the Work will be paid for in full without any retention or set-off.

## 7. LIMITATION OF LIABILITY

(a) The Company's total aggregate liability to the Client in all circumstances is limited to the amount paid by the Client to the Company for the Work.

(b) To the maximum extent permitted by law, the Company shall not be liable in any circumstances for:

- (i) any Consequential Loss;
- (ii) any damage to any property of whatsoever kind situated in, on or adjacent to the Site (unless caused by the negligence by the Company);
- (iii) any damage to the Work which is caused by chemicals from naturally occurring ground conditions such as acid sulphate subgrades or imported fill, or groundwater with high acidity or alkalinity.

(c) The Company's liability to the Client shall reduce to the extent that any Loss is caused or contributed to by:

- (i) any negligent and/or wilful act or omission or any breach of these Conditions by the Client, its employees or agents;
- (ii) the materials supplied by the Company being placed or installed by others.

## 8. JOB AVAILABILITY

(a) The Company requires adequate notice from the Client of the time when the Client would prefer the Work to be performed.

(b) No guarantee is given by the Company that Work will commence on the date requested or that the Work will be completed by any particular date.

(c) Should the execution of the Work not be possible for any reason whatsoever then the maintenance of the Pavement in an acceptable condition up until the time of the performance of the Work shall be the responsibility of the Client.

## 9. SITE ACCESS

(a) The Client will be responsible for providing adequate, suitable (including for all relevant machinery) and timely access to the Site for the Company's material, personnel and equipment and the Client will be liable to the Company for all Loss (including delay, establishment costs or outlays) incurred by the Company as a result of failure to provide such access.

(b) In the case where materials only are supplied by the Company to the Client, the Client shall indemnify the Company for any Loss incurred by the Company arising out of or in connection with the Company's (or its agent's) entry upon the Site for the purposes of delivery.

(c) Where the Company leaves equipment on the Site in connection with the performance of the Work, the Client shall take all reasonable precautions to secure the Site to prevent loss or damage to the equipment or any injury to persons entering upon the Site.

(d) Entry upon the Site remains at the sole discretion of the Company.

## 10. POSTPONEMENT OR CANCELLATION

(a) Subject to the above clause, labour, equipment and materials will be dispatched in quantities as ordered by the Client and at such times so as to enable performance of the Work at the times advised by the Client.

(b) Should execution of the Work be subsequently delayed for any reason beyond the control of the Company or as a result of any cause which the Client is or should reasonably have been aware of all Loss arising from the delay will be paid for by the Client.

## 11. SITE VISITS

(a) This quotation is based on the whole of the Work being available for completion at one (1) Site visit unless otherwise agreed or stated in the quotation.

## 12. ADDITIONAL SERVICES

(a) This quotation covers only the Work.

(b) Any additional materials or services which the Company agrees to supply or carry out will be paid for by the Client at a rate to be determined in accordance with the variations clause.

(c) Unless expressly stated on the face of this quotation, the Work does not include:

- (i) More than one site to complete the Work;
- (ii) Removal of any materials from guttering and/or channeling;
- (iii) Sweeping or cleaning of Work;
- (iv) Design of the Work;
- (v) Any additional works to alter or repair the Pavement or Sub-surface.

## 13. HOURS OF WORK

(a) Unless otherwise stated herein, this quotation is based on the whole of the Work being conducted during normal hours as defined below.

(b) Should it be necessary to conduct the Work or any necessary establishment work on a Saturday, Sunday or public holiday, then additional charges will apply which will be calculated in accordance with the variations clause.

(c) The Company's normal hours of business are between the hours of 7.00am to 4.30pm Monday to Friday.

#### 14. VARIATIONS

- (a) The Company is not obliged to carry out any variation outside the scope of the Work.
- (b) Any variation that the Company does carry out shall be subject to these Conditions and shall be charged to and paid for by the Client at an agreed rate.

#### 15. TAX INVOICES

- (a) The Client acknowledges that Boral Construction Materials Group Limited (ABN 15 000 028 080) has been appointed as agent for the purpose of invoicing and receiving revenue on the Company's behalf.
- (b) The Client agrees to pay the amount shown on invoices issued by Boral Construction Materials Group Limited or any replacement Boral Group nominee.
- (c) Invoices will be issued monthly, and at the completion of the Work.

#### 16. TERMS OF PAYMENT

- (a) The Client must pay invoices in full, without any deduction or set off, within 30 days of the date on the invoice.

#### 17. OTHER CHARGES & TAXES

- (a) The prices quoted do not include any statutory or Government charges. Should any such charges or any other revenue tax become applicable to the materials the subject of this quotation such tax or charge as the case may be shall be charged to and paid for by the Client in addition to the price otherwise payable under this quotation.
- (b) Notwithstanding anything else in these Conditions, if the Company has any liability to pay the Goods and Services Tax ("GST") on any materials and / or services supplied herein to the Client, the Client shall pay to the Company the amount of such GST at the same time as amounts otherwise payable to the Company.
- (c) Notwithstanding any other provision of these Conditions, including any special conditions, the Company may change the Rates at its discretion by giving the Client no less than 4 weeks' notice at any time if there has been a material increase in its cost of supply of the materials and Work. In doing so it must act reasonably. The Client may terminate this agreement within 4 weeks of receiving such a notice. If the Client does not terminate this agreement, or if the Client continues to order materials and Work following the expiration of that 4 week notice period, the Client is deemed to accept the revised Rates.

#### 18. PAVEMENT AND SUB-SURFACE ACCEPTABILITY

- (a) This quotation is provided on the basis that the Pavement and Sub-surface have been prepared to the satisfaction of the Client and to a standard appropriate for the Work.
- (b) The Client warrants that the Pavement and Sub-surface:
  - (i) comply in all respects with all relevant contractual, regulatory, and other applicable specifications;
  - (ii) will allow the normal and reasonable use of the Company's road surfacing equipment; and
  - (iii) will have the surface grading and texture characteristics which are suitable for the Work.
- (c) The Company is under no obligation to inspect or test the Pavement or Sub-surface to ascertain whether it meets the above requirements and may proceed with the Work assuming that the Pavement and Sub-surface meet all such requirements.
- (d) In the event that the Pavement or Sub-surface is not complete at the time the Company intends to conduct the Work or for any reason is not available, then the Client shall be responsible for all related Loss.
- (e) If the Pavement or Sub-surface or any part of either fails to meet the above requirements or is in any other way unsuitable:
  - (i) the Company (without prejudice to any other rights it may have against the Client) may at its option terminate this agreement at any time after it becomes aware of such failure, whether it has commenced the Work or not and all costs and expenses incurred by the Company to the date of termination shall be borne by the Client;
  - (ii) the Company will not be liable to the Client for any Loss arising from failing to commence or complete the Work;
  - (iii) if the Company completes the Work and due to the failure of the Pavement or Sub-surface to meet the above requirements, or due to any variation uses more material than envisaged in this quotation, the Client shall pay for such extra material at the Rates;
  - (iv) if, at the request of the Client, the Company agrees to perform any additional works to alter or repair the Pavement or Sub-surface, to the extent permitted by law, such works will be carried out by the Company without liability to the Client for either the suitability or acceptability of the Pavement or Sub-surface, the additional works performed, or otherwise with respect to the alterations or repairs to the Pavement and Sub surface and the Client shall have no claim against the Company for any Loss that may arise out of or in connection with such additional works.

#### 19. DELAY AND FORCE MAJEURE

The Company shall not be liable in any way for any delay in the performance of the Work where such delay occurs by reason of:

- (a) any cause whatsoever beyond the reasonable control of the Company including (without limitation) any accident, labour dispute, plant breakdown, materials or labour shortage, the change or introduction of any law or regulation or an act or omission of any supplier or other third party or any failure of any equipment owned or operated by them; or
- (b) restrictions of Government or other statutory authorities, wars, fires, epidemics, failure or fluctuation in any electrical power supply, storm, flood, or earthquake.

#### 20. TERMINATION

- (a) Either party may immediately terminate this agreement by notice in writing to the

other party if the other party fails to comply with or is in breach of any of its obligations under this agreement. Further, the Company may terminate these Conditions in its absolute discretion, for any reason whatsoever, upon written notice to the Client.

- (b) Upon termination pursuant to clause (a) or (b), the Client must pay the Company for materials delivered and Work performed by the Company up to the date of termination.
- (c) Subject to clause (e), the Company will not be liable to the Client for any Loss arising out of any termination in accordance with clause (a) or (b).
- (d) Where this agreement is a "consumer contract" or "small business contract" as those terms are defined in the Australian Consumer Law, and the Company terminates under clause (b), then the Company will reimburse the Client for any reasonable, direct and unavoidable costs incurred (acting reasonably in anticipation of the supply of the Work by the Company) prior to receipt of notice of termination. Such reimbursement will be subject to the Client doing all things reasonably necessary to mitigate any loss and will not include any costs and expenses for which liability was assumed after the notice of termination. To the maximum extent permitted by law, the Company will not be liable for any Consequential Loss arising from termination of this agreement.

#### 21. MAINTENANCE

- (a) This quotation does not cover any maintenance after completion of the Work.
- (b) The Client acknowledges that the Work will be paid for in full and no provision has been made for the retention of any monies by the Client unless otherwise agreed to by the Company in writing.

#### 22. INFORMATION

- (a) The Client acknowledges and agrees that:
  - (i) the Client must provide all relevant information (including all specifications relating to the Work, details relating to the Site, and other matters that may affect the Company's ability to complete the Work) to the Company to enable the Company to perform the Work; and
  - (ii) the Company in giving this quotation has relied upon the accuracy and completeness of such information, and the Client hereby warrants to the Company the accuracy and completeness of all information supplied.
- (b) If the Company has provided the Client with any information or other advice in connection with the Work, the Client acknowledges that it has formed its own opinion as to the correctness or otherwise of the information.

#### 23. RISK

- (a) Upon delivery of any materials the subject of this quotation to the Site or any temporary stockpiles, all risk in relation to the materials shall pass to the Client.
- (b) Property in the materials shall not pass to the Client until the Company has been paid in full for the Work.
- (c) Until property so passes, the Client holds the materials as bailee for the Company.
- (d) Nothing in these Conditions shall prevent the Company from taking action to recover the sale price of the materials.
- (e) Where materials are sold ex-bin, risk passes to the Client when the material is loaded on the Client's vehicle.

#### 24. SAFETY

- (a) The Client is responsible for ensuring safe and adequate access to the Site for delivery and all other aspects of Site safety.
- (b) The Client shall notify the Company of any obstacles or peculiarities in relation to the Site.

#### 25. GENERAL

**(Severance)** Any provision of these Conditions which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable, and if it can not be read down, severed to the extent necessary to make these Conditions enforceable, unless this would materially change the intended effect of these Conditions.

**(Waiver)** A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

**(No Implied terms)** The Client may have the benefit of certain statutory guarantees relating to the Work performed pursuant to the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or in connection with the supply of materials or performance of Work by law, statute, custom or international convention (including those relating to quality or fitness for purpose) are excluded.

**(Governing law)** These Conditions are governed by the laws of the State or Territory in which the Work is performed. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts. If the Work is performed outside Australia, the Conditions are governed by the laws of Queensland.

**(Insurance)** The Client must take out and maintain those policies of insurance that would be held by a reasonably prudent customer in the position of the Client.

**(Intellectual Property)** All Intellectual Property of the Company, including any developed during the course of performance of the Work, shall remain the sole property of the Company and no license, right or other interest of any kind in respect of such Intellectual Property is granted, created or transferred to the Client.

**(No Adverse Interpretation)** These Conditions are not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of these Conditions to protect itself.