

CONDITIONS OF SALE - CEMENT

1. DEFINITIONS AND INTERPRETATION

"Additional Charges Sheet" means the Company's schedule of additional charges applicable from time to time, which may be attached to this quotation or provided on request

"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 the Goods & Work is supplied.

"Company" means Boral Cement Limited ACN 008 528 523.

"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).

"Consumer" has the meaning in the Australian Consumer Law.

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

"Intellectual Property" means all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, confidential information, moral rights and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

"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.

"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 supply / performance of the Goods & Work specified on the face of this quotation.

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

2. AGREEMENT

Except to the extent otherwise explicitly agreed in writing between the parties, these Conditions (and, if applicable, the Boral credit application completed by the Client (and credit guarantees, if applicable) govern the entire relationship between the Company and the Client in connection with the Goods & Work and will prevail over any other document (including purchase order terms or procurement terms provided by the Client or terms on the back of delivery dockets to the extent inconsistent with these Conditions) from time to time. To the extent of any inconsistency between the credit application, the credit guarantees and these Conditions, these Conditions prevail. The Client acknowledges that it has not relied on any representation, inducement, warranty or promise which is not set out below. The Conditions may only be varied by both parties agreement in writing.

3. VALIDITY

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 supply / performance of the Goods & Work is started within 3 months of the date of the quotation. The offer is made subject to the Client meeting Boral Limited credit approval requirements. The Client's written order to commence the supply / performance of the Goods & Work or such commencement by the Company constitutes acceptance of the offer.

4. POINT OF SUPPLY

This quotation is based on all materials being available from the Company's normal point of supply with respect to the locations of the supply / performance of the Goods & Work (as determined by the Company) or as otherwise specified in these Conditions. Should conditions beyond control of the Company necessitate supply from any other point of supply any resultant increase in cost will be paid for by the Client.

5. EXTENT OF GOODS & WORK

This quotation is based on supply / performance of all of the Goods & Work at the Site. Should the quantities supplied or location of the Site vary from the quotation the Company reserves the right to adjust the Rate.

6. BASIS OF PAYMENT

The Goods & Work will be paid for by the Client at the Rates according to the actual quantities supplied as shown on the delivery docket, subject to these Conditions. The Client acknowledges that, unless otherwise specifically stated on the face of this quotation or applicable delivery docket, the Rates are subject to any additional charges pursuant to the Additional Charges Sheet or as otherwise notified to the Client by the Company. The Client acknowledges that the Goods & Works will be paid for in full without any retention or set-off and, for the avoidance of doubt, the Company is under no obligation to accept any products ordered in excess of the Client's requirements (and supplied as part of the Goods & Work) for return or credit.

7. LIMITATION OF LIABILITY AND INDEMNITY

If the Client is not a Consumer, the Company shall not be liable in any circumstances:

- for any damage to any property of whatsoever kind situated in, on or adjacent to the Site resulting from Goods & Work supplied or performed in accordance with these Conditions;
- for any defects in the Goods & Work unless the Client notifies the Company within 14 days of the date of delivery of the materials or the supply of the services specifying the defect, which notice shall be a condition precedent to any right to recover by the Client;
- for any Loss arising from delay;
- for any Consequential Loss,
- for any Loss arising from materials supplied by the Company being placed or installed by others,

and, subject to clause 8, the Company's total aggregate liability in all circumstances is limited (to the extent permitted by law) to the amount paid by the Client for the Goods & Work. To the maximum extent permitted by law, the Client hereby indemnifies and forever holds harmless the Company from all Losses caused or contributed to by any negligent and / or willful act or omission or any breach of these Conditions by the Client; or by the Company arising from supplying or performing the Goods & Works in accordance with these Conditions.

8. LIMITATION OF LIABILITY - AUSTRALIAN CONSUMER LAW GUARANTEES

Unless the Client indicates otherwise below, the Client acknowledges that the Goods & Work it will acquire from the Company will be obtained for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

By ticking this box, the Client notifies the Company that it is acquiring the Goods for a purpose other than that stated immediately above, in which event the provisions below may apply.

If the Client is a Consumer and any of the Goods supplied by the Company are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Client agrees that the Company's liability for a failure to comply with a consumer guarantee under the *Australian Consumer Law* in relation to those Goods (other than a guarantee under sections 51(f)(1), 52(undisturbed possession) and 53(undisclosed securities)) of the *Australian Consumer Law*, is limited to, at the option of the Company, one or more of the following:

- the replacement of the Goods or the supply of equivalent goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - the payment of the cost of having the Goods repaired.
- If the Client is a Consumer and any of the Work services supplied by the Company are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company's liability for a failure to comply with a consumer guarantee under the *Australian Consumer Law* in relation to those Work services is limited to, at the option of the Company:

- the supply of the Work services again; or
- the payment of the cost of having the Work services supplied again.

9. SITE ACCESS

The Company will deliver and the Client will receive the Goods & Work at the location stated on the face of this quotation in a timely manner. Entry upon the Site remains at the sole discretion of the Company and if, at the Client's request, the Company agrees to enter upon the Site for the supply / performance of the Goods & Work, the Client will be responsible for providing adequate, and timely access to the Site for the Company's material, personnel and equipment and the Client will indemnify the Company for all Loss (including delay and establishment costs) incurred by the Company as a result of failure to provide such access. If the Company or its agents enter the Site for the purposes of delivering the Goods, the Client shall indemnify the Company for any Loss incurred by the Company arising out of or in connection with such entry upon the Site. Where the Company leaves equipment on the Site in connection with the supply / performance of the Goods & Works, 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.

10. DELIVERY

The Company will use reasonable endeavours to supply / execute Goods & Work in accordance with the Client's schedule. However, should supply / execution of the Goods & Works be early or 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 will be the Client's responsibility and the Client shall indemnify the Company in respect of such Loss.

Prior to unloading from the delivery vehicle, or loading in the event that the Client collects the Goods from the Company's premises, the Client shall check that the Goods & Work description and quantity on the delivery docket conforms with its requirements, and the Client must record any discrepancies (including any damage and/or discrepancies in the quantity or specification) in writing on the delivery docket. Failure to make such notations on the copy of the docket retained by the Company is deemed to be conclusive evidence that the delivery docket is accurate and that the Client accepts the Goods & Work.

If the Company (in its absolute discretion) delivers Goods to an unattended Site, the Client must notify the Company of any discrepancies and/or damage to the Goods & Work within 24 hours of such delivery and failure to give such notice will be conclusive evidence that the Client accepts the Goods & Work.

11. SITE VISITS & HOURS

This quotation is based on the whole of the Goods & Work being available for completion at one (1) Site visit unless otherwise agreed or stated in the quotation. Unless otherwise stated herein, this quotation is based on the whole of the supply / performance of the Goods & Work being conducted during normal hours (normal loading hours are 5a.m. to 5p.m. Monday to Friday (excluding public holidays)). Should it be necessary to supply / perform the Goods & Works on a Saturday, Sunday or public holiday, then additional charges may apply which will be calculated in accordance with the variations clause.

12. VARIATIONS

The Company is not obliged to carry out any variation which is outside the scope of the Goods & Works. 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 or, failing agreement, at the rate determined by the Company.

13. TERMS OF PAYMENT

The Client must pay for the Goods & Work in immediately available funds prior to delivery, unless the Company agrees otherwise in writing.

14. TAXES & OTHER CHARGES

- The prices quoted do not include any statutory or Government charges. Should any such charges or any other tax become applicable to the materials the subject of this quotation such tax or charge shall be charged to and paid for by the Client in addition to the price otherwise payable under this quotation.
- 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.
- If the introduction of a regime relating to the emission, removal, mitigation, reduction, avoidance or sequestration of greenhouse gases ("Carbon Scheme") results in any additional financial burden whatsoever to the Company arising from the manufacture or supply of the Goods & Work, the Company may increase Rates to recover the reasonable net costs incurred arising from such Carbon Scheme.

15. FORCE MAJEURE

The Company shall not be liable in any way for any delay in the supply / performance of Goods & Works where such delay occurs by reason of any cause whatsoever beyond the reasonable control of the Company, including without limiting the generality thereof, restrictions of Government or other statutory authorities, wars, fires, epidemics, failure or fluctuation in any electrical power supply, storm, flood, earthquake, 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.

16. INFORMATION & IP

- The Client acknowledges and agrees that:
 - The Client must provide all relevant information (including all specifications relating to the Goods & Works, details relating to the Site, and other matters that may affect the Company's ability to complete the Goods & Works) to the Company to enable the Company to supply / perform the Goods & Works; and
 - 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.

- If the Company has provided the Client with any information (including any design services or other advice) in connection with the Goods & Works, the Client acknowledges that it has formed its own opinion as to the correctness or otherwise of the information and has not and will not rely on the Company in respect of such information.
- All Intellectual Property of the Company, including any developed during the course of supply / performance of the Goods & 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.

17. RISK

- Upon delivery of any Goods & Work to the Site or any temporary stockpiles, all risk in relation to those materials shall pass to the Client. Where materials are sold ex-bin or depot, risk passes to the Client when the material is loaded on the Client's vehicle.
- Property in the Goods & Work shall not pass to the Client until the Company has been paid in full.
- Until property so passes the Client:
 - holds the Goods & Work as bailee for the Company and shall store them separately from any other goods and in a manner which clearly identifies them as goods of the Company and shall maintain the state and condition in which they were received; and
 - is under an obligation to account to the Company for the proceeds of the sale of any Goods & Work.

Nothing in these Conditions shall prevent the Company from taking action for recovery of the sale price of the Goods & Work.

18. SAFETY

- The Client is responsible for ensuring safe and adequate access to the Site for delivery and all other aspects of Site safety.
- The driver making any delivery may refuse to complete the delivery, if not satisfied with the Client's compliance with (a) and (b) above, however, making a delivery shall not constitute an assessment of the safety of the Site and in no way relieves the Client of its obligations under these Conditions, including those relating to safety.
- The Client acknowledges that cement, lime, fly ash other goods and freshly mixed mortar, concrete or grout may cause skin irritation. The Client shall ensure that all personnel involved in the Goods & Work avoid contact with exposed skin areas and eyes and wear appropriate protection such as impervious clothing, safety goggles and gloves. The following are general guidelines relating to exposure and should not be treated as exhaustive. The Client acknowledges that it has appraised itself of these risks and that it will take appropriate safety precautions and training of its personnel. Should exposure occur, immediately rinse eyes and wash affected skin areas with clean fresh running water for 10 minutes. Seek medical advice if symptoms persist. Avoid breathing dust generated from drilling, sawing or chasing hardened concrete or quarry products as it may contain crystalline silica. Wear appropriate protective clothing, gloves, safety goggles and particulate respirator. Should exposure occur immediately rinse eyes with fresh clean running water for a minimum of 10 minutes. If dust is inhaled, immediately remove to fresh air. Seek medical advice should inhalation occur or if symptoms persist. Contact Boral for more information and a Material Safety Data Sheet or to view go to www.boral.com.au/product_index/material_safety_data_sheets.asp.

19. 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 Goods & Work services pursuant to the *Competition and Consumer Act 2010 (Cth)*. 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 the Goods & 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 Goods & Work is supplied / performed. If Goods & Work are supplied / performed outside Australia, the Conditions are governed by the laws of Queensland. 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.

(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.

(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.