

# CONDITIONS OF QUOTATION

## 1. DEFINITIONS AND INTERPRETATION

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

"Company" means Bitumax P/L trading as Boral Asphalt S.A.

"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" 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.

"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 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 supplied or to be supplied as described on the face of this quotation.

## 2. AGREEMENT

Except to the extent otherwise explicitly agreed in writing between the parties, these Conditions and the 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 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 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 Work or commencement of Work by the Company constitutes acceptance of the offer.

## 4. POINT OF SUPPLY

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 completion of the Work being available from Company's normal point of supply with respect to the locations of the 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 WORK

This quotation is based on supply of the full range of Work performed 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. If the Company commences the Works, and terminates in accordance with clause 18 or clause 20 of these Conditions, the Client will nevertheless be liable to pay for the work actually performed at a rate determined by the Company having regard to the Rate, adjusted for establishment cost, overheads, fixed costs and loss of profit and to the proportion of work actually performed of the Work, whether that work is satisfactory to the Client or the local authority or any other relevant authority or person or not.

## 6. BASIS OF PAYMENT

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. 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 completion of the Work and any such increase shall be paid for by the Client.

## 7. LIMITATION OF LIABILITY AND INDEMNITY

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 Work performed in accordance with these Conditions;
- for 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;
- for any defects in the 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 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 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 the carrying out of the Works in accordance with these Conditions.

## 8. JOB AVAILABILITY

The Company requires adequate notice from the Client of the time when the Client would prefer the Work to be performed. What constitutes 'adequate notice' shall be at the Company's sole discretion. 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. 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 Works shall be the responsibility of the Client.

## 9. SITE ACCESS

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 indemnify the Company for all Loss (including delay costs, establishment costs and outlays) incurred by the Company as a result of failure to provide such access. 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. Where the Company leaves equipment on the Site in connection with the performance of the 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. POSTPONEMENT OR CANCELLATION

Subject to the provisions of clause 8 above, 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 Works at the times advised by the Client. Should execution of the Works 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 and the Client shall indemnify the Company in respect of such Loss.

## 11. SITE VISITS

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

This quotation covers only the Work. 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 clause 14. Without in any way limiting the generality of this clause 12, unless expressly stated on the face of this quotation, the Work does not include:

- more than one site to complete the Work;
- removal of any materials from guttering and / or channeling;
- sweeping or cleaning of Work;
- design of the Work;
- work performed in accordance with clause 18(d).

## 13. HOURS OF WORK

Unless otherwise stated herein, this quotation is based on the whole of the Work being conducted during normal hours as defined below. Should it be necessary to conduct the Works 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. The Company's normal hours of business are between the hours of 7.00 am to 4.30 pm Monday to Friday.

## 14. VARIATIONS

The Company is not obliged to carry out any variation which is outside the scope of the 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.

## 15. TAX INVOICES

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. The Client agrees to pay the amount shown on invoices issued by Boral Construction Materials Group Limited. Invoices will be issued monthly, and at completion of the Works.

## 16. TERMS OF PAYMENT

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

## 17. TAX

- The prices quoted herein 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.
- 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.

## 18. PAVEMENT AND SUB-SURFACE ACCEPTABILITY

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 Works. The Client warrants that the Pavement and Sub-surface comply in all respects with all relevant contractual, regulatory, and other applicable specifications and will allow the normal and reasonable use of the Company's road surfacing equipment and will have the surface grading and texture characteristics which are suitable for the Works. 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. In the event that the Pavement or Sub-surface is not complete at the time the Company intends to conduct the Works or for any reason is not available, then the Client shall be responsible for all related Loss. If the Pavement or Sub-surface or any part of either fails to meet the above requirements or is in any other way unsuitable:

- 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 Works or not and all costs and expenses incurred by the Company to the date of termination shall be borne by the Client;
- the Company will not be liable to the Client for any Loss arising from failing to commence or complete the Works;
- if the Company completes the Works 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;
- 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 hereby indemnifies the Company against any Loss that may arise out of or in connection with such additional works.

## 19. FORCE MAJEURE

The Company shall not be liable in any way for any delay in the performance of 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, 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.

## 20. TERMINATION FOR CONVENIENCE

Notwithstanding anything else contained in these Conditions and without prejudice to any of the Company's other rights under these Conditions, the Company may terminate these Conditions in its absolute discretion, for any reason whatsoever, upon five (5) days written notice to the Client. Upon termination pursuant to this clause, the Client must pay the Company for the Works delivered by the Company up to the date the termination takes effect. The Company will not be liable to the Client for any Loss arising out of any termination in accordance with this clause.

## 21. MAINTENANCE

This quotation does not cover any maintenance after completion of the Works. The Client acknowledges that the Works 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

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

## 23. RISK

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. Property in the materials shall not pass to the Client until the Company has been paid in full for the Work. Where materials are sold ex-bin, risk passes to the Client when the material is loaded on the Client's vehicle.

## 24. 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 warranties) To the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions by law or statute (including those relating to quality or fitness for purpose) are excluded.

(Insolvency) If the Client is or becomes or is presumed to be insolvent (including where any steps are taken by a mortgagee to enter into possession of the Client's assets, or to have a receiver, administrator or liquidator appointed in respect of the Client, or to have the Client declared bankrupt, or enter into any scheme of arrangement), the Company may immediately terminate its engagement under these Conditions.

(Governing law) These Conditions are governed by the laws of the State or Territory in which the Work is performed. If Work is 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.