

# CONDITIONS OF QUOTATION & SUPPLY

## 1. DEFINITIONS AND INTERPRETATION

"Fees & Surcharges Sheet" means the Company's schedule of additional charges applicable from time to time, which may be attached to this quotation or on request, or at [www.boral.com.au/concrete/termsandconditions](http://www.boral.com.au/concrete/termsandconditions)

"AS1379-2007" means S.A.A. "Specification and Supply of Concrete" AS 1379-2007 as amended from time to time.

"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 Resources (WA) Ltd. ACN 008 686 904

"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.

"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.

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

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

"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.

## 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 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. The Client also acknowledges that the concrete included in the Goods & Work shall generally be supplied in accordance with the relevant sections of AS 1379-2007, unless otherwise stated on the face of this quotation. If the concrete is to be placed by pump, the Client must notify the Company in advance, and while the Company will use reasonable endeavors to accommodate such request, it does not warrant that such concrete will be able to be pumped due to the variations in pumps and the concrete process.

## 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 additional charges pursuant to the Fees & Surcharges Sheet. The Client acknowledges that the Goods & Works will be paid for in full without any retention or set-off.

## 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 defect which may develop in any concrete supplied if:
    - water is added to concrete either before or after discharge from the delivery unit without the approval of the Company's representative;
    - an admixture is used at the purchaser's request or specification; or
    - discharge from the agitator occurs more than 90 minutes from the time ex-plant;
  - for any Loss arising from materials supplied by the Company being placed or installed by others,
- and, subject to clause 9, 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(title), 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 kerb alignment in a timely manner. 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. 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 endeavors 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 discharge from the delivery vehicle 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 in writing on the delivery docket including discrepancies in quantity, specification, discharge records, or that the addition of water was done other than at the Customer's request. 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, the Client accepts the Goods and Work, and that any water added was done at the Client's request.

## 11. SITE VISITS & HOURS

Unless otherwise stated on the face of this quotation, this quotation is based on

- the whole of the Goods & Work being available for completion at one Site visit.
- the whole of the supply / performance of the Goods & Work being conducted during normal hours. Should it be necessary to supply / perform the Goods & 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 for loading are listed on the Company's Fees & Surcharges Sheet.

## 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. 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.

## 14. TERMS OF PAYMENT

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

## 15. 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.

## 16. 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.

## 17. MAINTENANCE

This quotation does not cover any maintenance after completion of the supply / performance of the Goods & Works.

## 18. TESTING

The Company will, at Client's request, use reasonable endeavors to arrange testing priced in accordance with the Fees & Surcharges Sheet. Any testing conducted or arranged by the Client will be by sampling at the discharge chute performed in accordance with AS 1012 and carried out by a NATA accredited laboratory. The Client will provide the Company with copies of any such third party testing conducted.

## 19. 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.

## 20. RISK

Upon delivery of any Goods & Work to the Site or any temporary stockpiles, all risk in relation to such shall pass to the Client. Property in the Goods & Work shall not pass to the Client until the Company has been paid in full. Where Goods are sold ex-bin, risk passes to the Client when the material is loaded on the Client's vehicle.

## 21. SAFETY

- The Client is responsible for ensuring safe and adequate access to the Site for delivery and all other aspects of Site safety.
- The Client shall notify the Company prior to delivery, of any obstacles or peculiarities in relation to the Site including whether the Site or its approach has a gradient greater than 8%.
- 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 freshly mixed cement, 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](http://www.boral.com.au/product_index/material_safety_data_sheets.asp)

## 22. 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.