

# CONDITIONS OF QUOTATION & SUPPLY – QUARRIES AND “OUTBOUND” RECYCLING

## 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; “**Carbon Price Legislation**” means any laws, regulations, legislative instruments, determinations or rules, whether enacted or amended either before or after the date of this quotation, concerning putting a price on greenhouse gas emissions or otherwise relating to the emission, production, removal, mitigation, reduction, abatement, avoidance or sequestration of greenhouse gases; “**Client**” means the customer named on the quotation, and if no customer is named, the customer to whom the Goods and Work is supplied; “**Company**” means Boral Resources (NSW) Pty Ltd; “**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**” means the materials supplied or to be supplied as described on the face of this quotation; “**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 and Work specified on the face of this quotation; “**Work**” means the 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 provision of the Goods and Work and will prevail over any other document (including purchase order terms or procurement terms provided by the Client) 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 60 days from the date on the quotation and any such acceptance must be on the basis that supply/performance of the Goods and 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 and Work or such commencement by the Company constitutes acceptance of the offer.

## 4. EXTENT OF MATERIALS AND WORK

This quotation is based on supply / performance of all of the Goods and 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.

## 5. MATERIAL QUALITY

The Client acknowledges and agrees that quarry or recycling materials of a particular description supplied as part of the Goods vary as to the uniformity of grading of material, size, shape moisture content, degradation factor, hardness, texture and other characteristics and, subject to clause 8, the Company expressly disclaims any liability with respect to such variations. The Client acknowledges that the Goods are provided on the basis they do not conform to any Australian Standard or specification except as stated on the face of this Quotation. The Company provides no warranty in relation or their compliance with any environmental law, regulation or standard. The Company shall not be liable for any failure of the Client or others to blend the Goods. At the request of the Client, the Company can provide a summary of traceable stockpiles of the Goods supplied to the Client.

## 6. BASIS OF PAYMENT

The Goods and 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 and any minimum order quantities specified on the face of this quotation or as otherwise notified to the Client by the Company. The actual quantities shown on the delivery docket shall be measured by the Company's weighbridge, or determined on such other basis as agreed between the Company and the Client in writing. The Client acknowledges that the Goods and Work will be paid for in full without any retention or set-off. The Company is under no obligation to accept any products ordered in excess of the Client's requirements as shown on the delivery docket (and supplied as part of the Goods and 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 and Work supplied or performed in accordance with these Conditions;
- for any defects in the Goods and Work unless the Client notifies the Company within 14 days of the date of delivery of the Goods or the supply of the Work 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 the Goods 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 Goods and 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, its employees or agents; or by the Company arising from supplying or performing the Goods and Work 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 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 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 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 but not limited to 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 supply/performance of the Goods and 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.

## 10. DELIVERY

- The Company will use reasonable endeavours to supply/execute the Goods and Work in accordance with the Client's schedule. However, should supply/execution of the Goods and Work 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 from the delay will be the Client's responsibility and the Client shall indemnify the Company in respect of such Loss. The Client is required to give the Company a minimum of 24 hours notice prior to the delivery of Goods, and the Company accepts no liability for delivery outside of the required notice period.
- The Client acknowledges that in the course of transportation of the Goods to the point of discharge, settling of the Goods may occur. Prior to discharge 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 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, but not limited to, discrepancies in quantity and specification. 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 the Client accepts the Goods have been supplied in accordance with these Conditions. Use, spreading or compacting of the Goods will be deemed as acceptance of the Goods by the Client.

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

## 11. HOURS

Unless otherwise stated on the face of this quotation, this quotation is based on the whole of the supply/performance of the Goods and Work being conducted during normal hours of the Company which may vary at each location. The Client should check the operating hours of each location at the time of quotation. Should it be necessary to supply/perform the Goods and Work outside of those hours then additional charges will 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 and Work. 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 falling 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 and Work in cash prior to the delivery or pick up of the Goods 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 the Goods and Work 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 any Carbon Price Legislation imposes or results in (either directly or indirectly) any increased costs, taxes, duties, excises, expenses or liabilities, or any decreased rebates, tax credits or other financial benefits, for Boral (or any of its related bodies corporate) arising out of or in connection with Boral supplying, providing or manufacturing the Goods and Work then, unless otherwise reimbursed to Boral under this quotation, the Rates shall be increased to recover such amounts, provided that Boral must give the Client 30 days' notice of such increase and must (if requested) supply the Client with reasonable supporting evidence regarding such increase. To the extent that there is any inconsistency between this clause and any other provision of this quotation, this clause prevails.

## 16. FORCE MAJEURE

The Company shall not be liable in any way for any delay in the supply / performance of Goods and Work 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. 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 and Goods 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.

## 18. TESTING

Goods supplied by the Company and provided to the Client are tested in accordance with the Company's quality control regime. The Company will, at Client's request, use reasonable endeavours to arrange any further testing of the Goods. The costs of any testing will be payable by the Client in accordance with the ruling rates at the time of delivery. Any testing conducted or arranged by the Client will be carried out by a NATA accredited laboratory. The Client will provide the Company with copies of any such third party testing conducted.

## 19. INFORMATION

(a) The Client acknowledges and agrees that:

- the Client must provide all relevant information to the Company to enable the Company to supply/perform the Goods and Work; 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.
- (b) If the Company has provided the Client with any information (including any design services or other advice) in connection with the Goods and Work, 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.

## 20. RISK AND TITLE

Upon delivery of the Goods 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 Goods and Work. Where the Goods are sold ex-bin, risk passes to the Client when the Goods are 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 breathing dust generated from drilling, sawing or cutting quarry products should be avoided as they may contain crystalline silica. The Client shall ensure that all personnel involved in the Goods and Work avoid contact with exposed skin areas and that a dust mask and goggles are worn as protection from dust when drilling, sawing or cutting. These are general guidelines only and should not be treated as exhaustive. The Client acknowledges that it has appraised itself of the risks in relation to the supply / performance of the Goods and Work, and that it will take appropriate safety precautions and training of its personnel. Contact the Company for more information and a Material Safety Data Sheet.

## 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 and 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 and Work by law, statute, custom or international convention (including, but not limited to, 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 Goods and Work is supplied/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.

(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.