

# CONDITIONS OF QUOTATION & SUPPLY – CEMENT (NATIONAL)

## 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.

"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 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).

"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.

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

"Intellectual Property" means all 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.

"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

- (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) 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;
  - (vi) the terms and conditions on the back of any delivery docket issued by the Company to the extent inconsistent with these Conditions; and
  - (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 supply / performance of the Goods & 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 supply / performance of the Goods & Work or such commencement by the Company constitutes acceptance of the offer.

## 4. POINT OF SUPPLY

- (a) This quotation is based on all materials being available from the Company's normal point of supply in respect to the locations of the supply / performance of Goods & 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 17(c), (d) and (e) shall apply).

## 5. EXTENT OF GOODS & WORK

- (a) This quotation is based on supply / performance of all of the Goods & Work 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.
- (c) The Company shall not be liable for any failure of the Client or others to blend the Goods.

## 6. BASIS OF PAYMENT

- (a) 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 and any minimum order quantities specified on the face of this quotation.
- (b) The Client acknowledges that the Rates are subject to any additional charges pursuant to an Additional Charges Sheet provided to the Client.
- (c) 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.

- (d) The Client acknowledges that the Goods & 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 Goods & Work.
- (b) Subject to clause 8 and 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 claim for adjustment of invoicing by the Company, including (without limitation) in connection with any alleged non-delivery, short delivery, incorrect delivery, late delivery, damage caused during delivery of Goods, the charging of any fees, or errors in invoicing, unless the Client notifies the Company in writing within 30 days of the date of invoice, specifying the details and the amount of the disputed items and any amount that the Client accepts is payable. The Client must pay any undisputed amount by the relevant due date. The Company and the Client will use reasonable endeavours to resolve any notified dispute under this subclause within a further 30 days.
- (c) The Company's liability to the Client shall reduce to the extent that any Loss is caused or contributed to by any negligent and/or wilful act or omission or any breach of these Conditions by the Client, its employees or agents.

## 8. AUSTRALIAN CONSUMER LAW GUARANTEES

- (a) Unless the Client indicates otherwise, 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.
- (b) Where the Client is acquiring the Goods for a purpose other than that stated immediately above, the following provisions apply.
- (c) 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:
  - (i) the replacement of the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the Goods repaired.
- (d) 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:
  - (v) the supply of the Work services again; or
  - (vi) the payment of the cost of having the Work services supplied again.

## 9. SITE ACCESS

- (a) The Company will deliver and the Client will receive the Goods & Work at the kerb alignment in a timely manner.
- (b) 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 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.
- (c) Entry upon the Site remains at the sole discretion of the Company.
- (d) 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.
- (e) 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

- (a) 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.
- (b) The Client acknowledges that in the course of transportation of the Goods to the point of discharge, settling of the Goods may occur.
- (c) 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 (or its agent) 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 discrepancies in quantity or specification.
- (d) Unless any discrepancies are recorded on the copy of the delivery docket retained by the Company, the Client accepts the Goods & Work (subject to clause 7) by the discharging of the delivery vehicle (or collecting the goods).
- (e) 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 in the Goods) regarding the Goods within 24 hours of such delivery and failure to give such notice will be rebuttable evidence that the Client accepts the Goods.

## 18. [NOT USED]

- (f) If the Company delivered Goods & Work by rail to an address in a place where there is no receiving depot, the Goods & Work are deemed delivered when they are unloaded at the nearest railhead and the provisions in clause (e) above apply.

## 11. SITE VISITS & HOURS

- (a) Unless otherwise stated on the face of this quotation, this quotation is based on the whole of the supply / performance of the Goods & Work being conducted during normal hours of the Company (normal loading hours are 5am to 5pm Monday to Friday excluding public holidays). The Client should check the operating hours of each location at the time of quotation.
- (b) Should it be necessary to supply / perform the Goods & Works outside of these hours or on a Saturday, Sunday or public holiday, then additional charges will apply which will be calculated in accordance with the variations clause.

## 12. VARIATIONS

- (a) The Company is not obliged to carry out any variation which is outside the scope of the Goods & Works.
- (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.

## 13. [NOT USED]

## 14. TERMS OF PAYMENT

- (a) The Client must pay for the Goods & Work in immediately available funds prior to the delivery or pick up of the Goods unless the Company agrees otherwise in writing.

## 15. OTHER CHARGES & TAXES

- (a) 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.
- (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) 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 the Goods & Work, the Company may increase Rates to recover the reasonable net costs incurred arising from such Carbon Scheme.
- (d) 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 Goods and Works. 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 Goods & Work following the expiration of that 4 week notice period, the Client is deemed to accept the revised Rates.

## 16. DELAY AND 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:

- (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.

## 17. 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.
- (b) Further, the Company may terminate these Conditions in its absolute discretion, for any reason whatsoever, by giving written notice to the Client.
- (c) Upon termination pursuant to clause (a) or (b), the Client must pay the Company for Goods and Work delivered by the Company up to the date of termination.
- (d) 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).
- (e) 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 Goods & 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.

## 19. RISK, TITLE & PPSA

- (a) Upon delivery of any Goods & Work to the Site or any temporary stockpiles, all risk in relation to such shall pass to the Client.
- (b) Property in the Goods & Work shall not pass to the Client until the Company has been paid in full.
- (c) Until property so passes, the Client holds the Goods & Work as bailee for the Company; shall store them separately in a manner which clearly identifies them as the Company's goods; shall maintain the state / 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 to recover the sale price of the Goods & Work.
- (d) The retention of title arrangement described in this clause constitutes the grant of a purchase money security interest or other security interest by the Client in favour of the Company in respect of all present and after-acquired property (including the Goods & Work) supplied by the Company to the Client. The Client must immediately do anything reasonably required by the Company (including signing documents) to ensure that this purchase money security interest is a perfected and first-ranking security interest. To the extent permitted by law, the Client waives its rights and entitlements to any verification statement or other notice or communication that may be necessary, required or desirable under the Personal Property Securities Act 2009 ("PPSA") (including under sections 95, 118, 121, 130, 132, 135, 142 or 143). The terms "purchase money security interest", "perfected security interest" and "verification statement" have the meanings given to those terms in the PPSA.
- (e) Where Goods are sold ex-bin, risk passes to the Client when the material is loaded on the Client's vehicle.

## 20. 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 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%.
- (c) 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.
- (d) If the Client collects the Goods & Work from the Company's site, the Client is responsible for ensuring that it (and its employees, agents and contractors) comply with all applicable laws, site policies / procedures and all reasonable directions given by or on behalf of the Company whilst on or in the vicinity of the Company's site.
- (e) The Client acknowledges that cement, lime and fly ash and freshly mixed mortar, concrete or grout may cause skin irritancy. 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. These are general guidelines only 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. Avoid breathing dust generated from drilling, sawing or cutting hardened concrete or quarry products as they may contain crystalline. Contact Boral for more information and a Material Safety Data Sheet or to view go to [www.boral.com.au/sds-sheets](http://www.boral.com.au/sds-sheets)

## 21. 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 cannot 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 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 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. 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 Goods & Work are supplied / 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 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.

**(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.