

MIDLAND BRICK CONDITIONS OF QUOTATION & SUPPLY

Effective May 2013

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.

"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 Bricks Western Australia Pty Limited, trading as Midland Brick.

"Conditions" means these conditions of quotation and supply and any additional matters prescribed on the face of this quotation.

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

"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).

"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" 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.

"Product Warranties" means the warranties, if any, expressly applicable to the Goods & Works.

"Rates" means the unit rate shown on the face of this quotation, listed in the current price list or otherwise used to calculate the prices in the quotation.

"Security Deposit" means an amount determined by the Company, in its absolute discretion, for each pallet used for the Goods & Work.

"Site" means the location for supply / performance of the Goods & Work specified on the face of this quotation or otherwise agreed in writing.

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 (together with any credit guarantees and any applicable Product Warranties) govern the entire relationship between the Company and the Client in connection with the provision of the Goods & Work and will prevail over any other document. 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. EXTENT OF GOODS & WORK

This quotation is based on supply / performance of all of the Goods & Work at the Site. The Client acknowledges that the products included in the Goods & Work comply with (as relevant to the particular products) AS4455.1:2008 (Masonry Units), AS4455.2:2010 (Pavers and Flags) or AS4455.3:2008 (Segmental Retaining Wall), unless otherwise stated on the face of this quotation. The Client acknowledges that in the event the Company is required to estimate the quantity of Goods required by the Client, the Company's estimate shall be calculated with reasonable care based on the information submitted to the Company. The Company shall not be responsible for any discrepancies or errors in quantities suggested and the Company expressly disclaims any liability with respect to such estimates. Should the quantities supplied or location of the Site vary from the quotation the Company reserves the right to adjust the Rate.

5. PRODUCT APPEARANCE

The Client acknowledges and agrees that natural concrete masonry, clay fired and tile products of a particular trade description supplied as part of the Goods & Work may vary as to colour, profile and other characteristics, and the Company expressly disclaims any liability with respect to such variations or where the Client or its contractors fail satisfactorily to blend the products forming the Goods & Work before construction.

6. BASIS OF PAYMENT

The Goods & Work will be paid for by the Client at the Rates according to the actual quantities supplied as evidenced by the Company's delivery records, subject to these Conditions and any additional charges referred to on the face of this quotation or otherwise notified to the Client by the Company. The Client acknowledges that the Rates are subject to change at any time at the Company's absolute discretion (including Rate changes due to increases in the costs of labour, raw materials and Company wide price increases). The Client acknowledges that the Goods & Works will be paid for in full without any retention, set-off or back-charges 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. PALLETS AND CRATING

The Client agrees to pay a Security Deposit as specified on the face of this quotation or otherwise as notified to the Client from time to time. Property in the pallets shall at all times remain with the Company and nothing in these Conditions shall constitute a sale of the pallets. The Client shall ensure that pallets are stacked safely on Site and left in an accessible location for collection by the Company or its contractors immediately after being unloaded. In the event that pallets are not made available for return in accordance with these Conditions, the Security Deposit shall be forfeited by the Client.

8. LIMITATION OF LIABILITY AND INDEMNITY

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

(a) 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;

(b) for any defects in the Goods & Work unless the Client notifies the Company within the earlier of 72 hours of the date of delivery of the materials, prior to fixing or the supply of the services specifying the defect, which notice shall be a condition precedent to any right to recover by the Client;

(c) for any Loss arising from delay;

(d) for any Consequential Loss; and

(e) 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.

9. 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)), is limited to, at the option of the Company, one or more of the following:

(a) the replacement of the Goods or the supply of equivalent goods;

(b) the repair of the Goods;

(c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

(d) the payment of the cost of having the Goods repaired.

If the Client is a Consumer and any of the 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:

(e) the supply of the services again; or

(f) the payment of the cost of having the services supplied again.

10. SITE ACCESS

Unless otherwise explicitly agreed in writing between the parties, the Company will deliver and the Client will receive the Goods & Work at the street frontage of the Site in a timely manner. While the Client may request that the Company enter upon the Site for the purposes of delivering the Goods & Work, entry upon the Site remains at the sole discretion of the Company. In the event that the Company agrees to enter upon the Site, the Client will be responsible for providing adequate, safe, 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 & 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.

11. DELIVERY

The Company will use reasonable endeavours to deliver Goods & Work in accordance with the Client's schedule. However, should supply / performance of the Goods & Works be early or delayed for any reason beyond the control of the Company (including stock unavailability) 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 shall:

(a) prior to unloading of Goods from the delivery vehicle (or within 24 hours if the Goods are delivered to an unattended site), check that the description and quantity on the delivery docket conforms with the Client's requirements, and the Client must record any discrepancies 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

(b) within 24 hours of delivery of the Goods (and prior to laying of the Goods), inspect the Goods and notify the Company of any fault in the Goods. If no notification is made to the Company within 24 hours of delivery (or before the Goods are laid), the Client is deemed to accept the Goods & Work.

12. SITE VISITS & HOURS

This quotation is based on the whole of the supply / performance of the Goods & Work being conducted during normal hours as defined below. Should it be necessary to supply / perform the Goods & Works on a Saturday, Sunday, public holiday, or otherwise outside those normal hours, then additional charges will apply which will be calculated in accordance with the variations clause. The Company's normal hours of business for deliveries or loading are 5am to 5pm Monday to Friday (excluding public holidays and subject to relevant Council regulations).

13. VARIATIONS

The Company is not obliged to carry out any variation which is outside the scope of the Goods & Works. Any variation request must be in writing and agreed between the parties. Any variation 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.

14. TERMS OF PAYMENT

(a) Subject to clause 14(b), the Client must pay for the Goods & Work in immediately available funds prior to delivery unless otherwise stated on the face of this quotation or otherwise agreed in writing.

(b) If the supply / performance of all of the Goods & Works the subject of this quotation is under a domestic building work contract and the contract price is:

i) greater than \$20,000, the Client must pay the Company 5% of the contract price in immediately available funds prior to delivery; or

ii) less than or equal to \$20,000, the Client must pay the Company 10% of the contract price in immediately available funds prior to delivery, and the balance of the contract price must be paid on completion of the supply / performance of the Goods & Work. Clause 13(b) applies to domestic building work contracts unless the Company agrees otherwise in writing.

15. TAXES & OTHER CHARGES

(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 Pollution Reduction Scheme) results in any additional financial burden whatsoever to the Company arising from the manufacture or supply of goods or services under these Conditions, the Company may increase the Rates to recover the reasonable net costs incurred by the Company arising from any Carbon Pollution Reduction Scheme attributable to the Goods & Work.

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, interruption of transport, 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. INFORMATION

(a) The Client acknowledges and agrees that:

i) the Client must provide all relevant information to the Company to enable the Company to supply / perform the Goods & Works; and

ii) 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 & 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.

18. RISK AND TITLE

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 Goods & Work.

19. RIGHT TO REPOSSESS

The Company may, without prejudice to any of its rights and without notice, retake goods which remain its property and may for that purpose by its servants and agents enter the Client's premises or the Site or any other place where the Goods may be if the Client:

(a) commences to be wound up or placed under official management or a receiver is appointed or takes possession of its undertaking or any part of its property;

(b) becomes insolvent or bankrupt or commits an act of bankruptcy or makes an assignment for the benefit of a creditor;

(c) fails to pay any amounts with respect to the Goods & Work when those amounts are due and payable; or

(d) is in breach of these Conditions.

20. SAFETY & ACKNOWLEDGMENTS

(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 there are any low-hanging overhead power lines.

(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) The Client acknowledges that it has appraised itself of the risks in relation to the supply / performance of the Goods & Work, and that it will implement appropriate safety precautions and training of its personnel. Contact the Company for more information and a Material Safety Data Sheet.

(e) The Client acknowledges that cleaning of clay and masonry products is the responsibility of, and at the risk of, the Client.

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 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 by law, or in connection with the supply of the Goods & Work by law, statute, custom or international convention (including, but not limited to, those relating to quality or fitness for purpose) are excluded to the extent permitted by law.

(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 & 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.