
Statewide Bitumen Pty Ltd Commercial Terms & Conditions of Trade

Definitions:

- 1.1 "Contractor" shall mean Statewide Bitumen Pty Ltd T/A Statewide Bitumen and its successors and assigns.
1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
1.4 "Goods" shall mean Goods supplied by the Contractor to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
1.5 "Services" shall mean all services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
1.6 "Price" shall mean the cost of the Goods as agreed between the Contractor and the Customer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Contractor from the Customer for the supply of Goods and/or the Customer's acceptance Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
2.2 Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.
2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Contractor.
2.4 None of the Contractor's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.
2.5 The Customer undertakes to give the Contractor not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

3. Goods

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Contractor to the Customer.

4. Price And Payment

- 4.1 The Price of the Goods shall (subject to clause 4.2) be the Contractor's quoted Price which shall be binding upon the Contractor provided that the Customer shall accept in writing the Contractor's quotation within thirty (30) days.
4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
4.4 At the Contractor's sole discretion, for certain approved Customers payment will be due either on receipt of invoice or seven (7) or thirty (30) days following the date of the invoice.
4.5 Payment will be made by cash on delivery, or by cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Contractor.
4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Contractor.

5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
5.2 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
5.3 The Contractor shall not be liable for any loss or damage whatever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Contractor retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Contractor is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and

conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

7. Customer's Disclaimer

7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Contractor and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Contractor shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

8. Cancellation

8.1 The Contractor may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.

9. Warranty

9.1 Subject to the conditions of warranty set out in Clause 9.2 the Contractor warrants that if any defect in any workmanship manufactured by the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) repair the defect or replace the workmanship.

9.2 The conditions applicable to the warranty given by Clause 9.1 are:

(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- i) Failure on the part of the Customer to properly maintain any Goods; or
- ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
- iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
- iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- v) Fair wear and tear, any accident or act of God.

(b) The warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.

(a) In respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

(c) Faults must be notified in writing to the contractor within 7 days, the warranty will cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if notice is not given the opportunity to repair the defect / damage before further damage is done by traffic or weather.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

10.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Intellectual Property

11.1 Where the Contractor has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion.

11.2 Conversely, in such a situation, where the Customer has supplied drawings, the Contractor in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Contractor).

11.3 Where any designs or specifications have been supplied by the Customer for manufacture, by or to the order of the Contractor then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

12. Default & Consequences Of Default

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Contractor from and against all the Contractor's costs and disbursements including on a solicitor and own client basis and in addition all of the Contractor's nominees costs of collection.

12.3 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor exercised its rights under this clause.

12.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

12.5 In the event that:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Contractor's other remedies at law
- (i) the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Contractor shall, whether or not due for payment, immediately become payable.

13. Title

13.1 It is the intention of the Contractor and agreed by the Customer that property in the Goods shall not pass until:

- (a) The Customer has paid all amounts owing for the particular Goods, and
- (b) The Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer, and that the Goods shall be kept separate until the Contractor shall have received payment and all other obligations of the Customer are met.

14. Security And Charge

14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Contractor may have howsoever:

- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Contractor elect to proceed in any manner in accordance with this clause and/or its subclauses, the Customer and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Contractor and/or the Contractor's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Contractor and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Contractor and further to do and perform necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Contractor's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. Variatins.

15.1 Notice in writing is required to vary works at least 10 days prior to commencement of works to allow time for re-quoting. Deposits and or commissions paid to sales representatives are non refundable if the new quotation is not accepted.

15.5 Variations in job specification while works are in progress and where extra materials are required or cannot be carried out with the pre ordered materials or within quoted time allocated for the said works, will incur the following additional charges, Asphalt \$80pm², Bitumen \$30pm², roadbase, \$30pm.

15.3 Variations where materials are not required but cause normal works to cease will incur the following charges \$40per hour per man on site, bitumen truck and plant \$150.00 per hour, asphalt machinery and plant \$200.00 per hour.

16. Privacy Act 1988

16.1 The Customer and/or the Guarantor/s agree for the Contractor to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Contractor.

16.2 The Customer and/or the Guarantor/s agree that the Contractor may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Customer;
- (b) To notify other credit providers of a default by the Customer;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
- (d) To assess the credit worthiness of Customer and/or Guarantor/s.

16.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

16.4 The Customer agrees that Personal Data provided may be used and retained by the Contractor for the following purposes and for other purposes as shall be agreed between the Customer and Contractor or required by law from time to time:

- (a) provision of Services & Goods;
- (b) marketing of Services and or Goods by the Contractor, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.

16.5 The Contractor may give, information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. General

17.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 All Goods supplied by the Contractor are subject to the laws of Queensland and the Contractor takes no responsibility for changes in the law which affect the Goods supplied.

17.3 The Contractor shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions.

17.4 In the event of any breach of this contract by the Contractor the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Contractor exceed the Price of the Services.

17.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.6 The Contractor reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Contractor notifies the Customer of such change.

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