

# CONDITIONS OF QUOTATION & SUPPLY

## 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 or on request, or at [www.boral.com.au/plasterboard/termsandconditions](http://www.boral.com.au/plasterboard/termsandconditions).

"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 USG Boral Building Products Pty Limited (ACN 004 231 976).

"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" 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 or a fine or penalty imposed by a statutory or other authority.

"Product Warranties" means the warranties expressly applicable to the Goods & Works, as specified at <http://www.boral.com.au/plasterboard/product-warranty.asp>. A hard copy of these warranties is also available on request.

"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)) and any applicable Product Warranties 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, the Product Warranties 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.

## 6. PRODUCT APPEARANCE

The Client acknowledges and agrees that plasterboard products of a particular trade description supplied as part of the Goods & Work may vary as to appearance, including colour and other characteristics, and subject to clause 10, the Company expressly disclaims any liability with respect to such variations. Without limiting the acknowledgments and disclaimers in the preceding sentence, if the Client wishes to match the characteristics of any products supplied then the Client must purchase sufficient quantities of that product to complete such work in a single order to allow the Client to select and match the product.

## 7. HANDLING AND STORAGE OF GOODS

The Company is not responsible for any damage caused to the Goods resulting from any failure by the Client to keep the Goods dry and fully protected from the weather, including but not limited to exposing the Goods to direct sunlight, excessive heat, moisture or humidity.

## 8. PRODUCT INSTALLATION

The Client is responsible for installation of the Goods unless otherwise stated on the face of this quotation. The Company is not responsible in any way for any claims resulting from the installation of the Goods by the Client. Where the Company is responsible for installation of the Goods, then the following terms and conditions shall apply:

- It is the Client's responsibility to ensure that at all times during installation:
  - the framing is plumb, level and square;
  - other trades have finished their 'rough-ins';
  - noggings supporting services such as taps and cisterns do not protrude beyond the face of the framing;
  - plumbing and electrical services have been installed and do not protrude beyond the face of the framing;
  - the area where the Goods will be installed, and the adjacent areas, is waterproof;
  - the spacing of the studs, joists or battens takes into account the spacing required by the linings given in the Frame Spacing Table found in the Company's "Plasterboard Installation Manual" a copy of which is available from the Company on request or at [http://www.boral.com.au/brochures/ordering/default.asp?site=boral&company=Plasterboard&product=plasterboard&subsite=&category=2&c\\_name=TechnicalManuals&list=0&scr=1](http://www.boral.com.au/brochures/ordering/default.asp?site=boral&company=Plasterboard&product=plasterboard&subsite=&category=2&c_name=TechnicalManuals&list=0&scr=1);
  - when the installation is completed the plasterboard will comply with the required level of finish;
  - the substrate (whether timber or metal framed or masonry) is suitable and fit for purpose as a base for the installation of the Goods.
- 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 the Client not complying with its responsibilities under this clause.

## 9. 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 any additional charges pursuant to the Additional Charges Sheet. The Client acknowledges that the Goods & Works 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 (and supplied as part of the Goods & Work) for return or credit.

## 10. 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 Loss arising from materials supplied by the Company being placed or installed by others, and, subject to clause 11, 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 the performing the Goods & Works in accordance with these Conditions.

## 11. LIMITATION OF LIABILITY UNDER 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.

## 12. SITE ACCESS

Except in the case where the Company is performing installation work, 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.

## 13. DELIVERY

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 and the Client shall indemnify the Company in respect of such Loss. 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 & Work description and quantity on the delivery docket conforms with its requirements, and the Client must record any discrepancies (including any damage to the Goods & Work) in writing on the delivery docket including, but not limited to, discrepancies in quantity or 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 that the Client accepts the Goods & Work.

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 & Work) 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 & Work.

## 14. 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 (1) 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 6a.m. to 5p.m. Monday to Friday (excluding public holidays).

## 15. 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.

## 16. TERMS OF PAYMENT

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

## 17. 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 under these Conditions, the Company may increase Rates to recover the reasonable net costs incurred arising from such Carbon Scheme.

## 18. 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.

## 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.

## 21. 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 any other place where the goods may be if the Client:

## CONDITIONS OF QUOTATION & SUPPLY

- (a) commences to be wound up or placed under official management or a receiver is appointed or an encumbrancer 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.

### 22. 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% or surfaces which are non-trafficable.
- (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 the following precautions are recommended by the Company for safety and first aid in relation to the Goods and Work (this list is not exhaustive):
  - i) Avoid creating dust when handling plasterboard or mixing plasterboard products;
  - ii) After trowelling, reduce sanding by passing a wet sponge over the edges of the finished joints;
  - iii) If dry sanding is necessary minimise the effect of dust by:
    - (1) ensuring adequate ventilation;
    - (2) wearing eye protection;
    - (3) wearing a respiratory mask conforming to AS/NZS 1716:1994 Respiratory protective devices;
    - (4) using a mechanical sanding tool fitted with a dust extractor and storage bag;
  - iv) If compound or dust is in the eyes, wash out eyes thoroughly with clean water;
  - v) If compound or dust on skin, then wash skin with soap and clean water;
  - vi) If dust is inhaled, move to a well ventilated area with fresh air; and
  - vii) If compounds or dust is inhaled, then drink plenty of water.

The Client acknowledges and agrees it will at all time observe the recommendations contained on the packaging labels of any Goods relating to safety and first aid.

The Client acknowledges that it has appraised itself of the risks in relation to the Goods & Work, and that it will take appropriate safety precautions and training of its personnel including reviewing Material Safety Data Sheets which are available from the Company on request or at

[www.boral.com.au/brochures/ordering/default.asp?site=boral&product=plasterboard&company=Plasterboard&category=304&c.name=MSDS&scr=1](http://www.boral.com.au/brochures/ordering/default.asp?site=boral&product=plasterboard&company=Plasterboard&category=304&c.name=MSDS&scr=1).

### 23. PALLETS AND CRATING

Pallets shall be credited in full upon return in good order at the Company's list prices from time to time. The Client shall be responsible for replacing all lost or damaged pallets at the Company's list prices at the time of replacement.

### 24. 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, but not limited to, 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.