



## **STANDARD TERMS & CONDITIONS for QUOTATIONS.**

Bitu-mill (Road Maintenance) Pty Ltd, Bitu-mill (Civil) Pty Ltd, Bitu-mill Services Pty Ltd and Bitu-mill Equipment Pty Ltd ("Bitu-mill")

These terms and conditions ("Standard Terms and Conditions") form part of and are to be read in conjunction with the particulars contained in the Quotation. The Quotation is given by Bitu-mill to the Customer to perform works as specified in the Quotation and the Customer accepts the Quotation on the basis of Bitu-mill's Standard Terms and Conditions. Where there is a Subcontract Agreement in place between the Customer and Bitu-mill the Subcontract Agreement terms and conditions will have precedence over Bitu-mill's Standard Terms and Conditions .

### **1. PRICE & PAYMENT**

1. The price stated includes:

- (a) Current costs for transport, labour and materials, including Bitumen, and shall remain valid for 30 days, unless otherwise specified in the Quotation. Items containing Bitumen are subject to the rise and fall of the General Market Price (GMP) of Bitumen from the Quotation date to the date of commencement of the work, based on Department of Main Roads Minor Works Contracts clause B19 Adjustment for the cost of Bitumen. Bitu-mill reserves the right to pass on changes in the GMP of Bitumen at its discretion;
- (b) The work being carried out during normal working hours Monday to Friday, 7.00am to 4.00pm, unless otherwise specified by Bitu-mill. Work completed outside these hours at the request of the Customer will attract additional charges;
- (c) An assumption that all measured areas and project particulars that are supplied by the Customer, are accurate; and accordingly the price is subject to variation if any of the measured areas or project particulars are inaccurate, insufficient or have varied from the date of the Quotation.
- (d) The quoted rates being subject to change if the scheduled quantity, or the constructed quantity varies by more than 10% of the stated scheduled quantity in the Quotation. Either Bitu-mill or the Customer can request a re-quote of the items quoted rate.
- (e) If the volume available to be laid is decreased by more than 10% of the quoted volume, Bitu-mill reserve the right to revise the quoted rate to allow for recovery of the fixed cost of its paving crew.

2. The price does not include:

- (a) Any additional services not detailed in the Quotation, and the price is subject to variation to take account of changes in any exclusions.
  - (b) Provision for site specific conditions or allowances, unless otherwise specified.
  - (c) The cost of inductions for crews, except for an on site induction prior to the commencement of the works of up to twenty (20) minutes. Time in excess of 20 minutes will be charged at \$80.00 per hour per man or part thereof.
  - (d) Unless otherwise stated, the Customer will be responsible for the cost of all testing.
3. This Quotation is based on the full range of services stated in the Quotation and is not open to acceptance in part, except for any provisional items as specified in the Quotation.
4. The Quotation may be in the form of a Lump Sum, a Lump Sum with Unit Rates, or a Schedule of Unit Rates. Unit rates are quoted in accordance with the following:

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- (a) When a price per unit of weight is stated, the quantity shall be based on weight shown on the delivery docket.
  - (b) When a price per cubic metre is stated, the quantity, in the case of bitumen sealing, will be based on the area of work completed divided by the spread rate, in the case of excavation of material, the quantity will be work area completed multiplied by the depth of the cut.
  - (c) When price per unit of area is stated, the quantity shall be based on the measurement of actual surface area, measured to include grade changes of the completed work.
  - (d) When a price per unit of length is stated, the quantity shall be based on the measurement of the total length of the work completed, measured to include curves and changes in grade.
  - (e) For items quoted on number basis, the quantity will be based on the number of items installed or supplied.
5. Terms of payment – Unless otherwise stated in the Quotation, payment in the form of an EFT or a bank cheque is required upon completion of work, unless prior credit application is accepted in writing. Upon completion, all outstanding balances, including extras must be paid within thirty (30) days upon presentation of our official invoice, unless otherwise stated.
  6. No deductions or retentions whatsoever shall be made by the Customer unless stated in the Quotation.
  7. Bitu-mill reserves the right to charge interest on any overdue amounts at a rate equal to 2% above the current overdraft rate charged to Bitu-mill by its bankers. Bitu-mill also reserves the right to suspend further works until all amounts outstanding (including interest) have been paid in full.
  8. If required by Bitu-mill, the Customer shall provide a bank guarantee for the Total Price, or in a form acceptable to Bitu-mill.

## **2. SPECIFICATIONS**

1. Unless otherwise stated by Bitu-mill in the project specific conditions, materials and works will comply with the relevant Australian Standard if one is available.
2. Asphalt pavements with falls of 1% or less cannot be considered to have adequate fall to stop water ponding. Where the crossfall from crown to gully is less than or equal to 1%, Bitu-mill will not warrant any work for ponding of water.
3. Testing will be carried out if requested by the Customer and at the Customers expense.
4. It is agreed by the Customer that Bitu-mill is not responsible for the following:
  - a) The design of the works;
  - b) additional work required to strengthen the subgrade or pavement base unless specifically priced as an item in the Quotation or otherwise specified in the conditions of the Quotation.
  - c) excavation of rock, milling of concrete or other similar hard materials unless otherwise specified in the Quotation.
5. Any specific specification required by the Customer in respect of the materials supplied shall be stated in the Quotation and confirmed by Bitu-mill. In respect of asphalt, unless specified otherwise, the asphalt shall be based on a Class 320 Binder. The purchaser shall be liable for any charge arising from the specification as requested being changed.
6. Unless specified otherwise, and agreed to in writing, Bitu-mill does not make any representation, warranty or statement that a pavement is fit for its intended purpose, including, but not limited to its adequacy to support the intended loads imposed on it, or that the specifications are correct or appropriate for the intended purpose.

## **3. SITE & ACCESS**

1. Bitu-mill reserves the right to vary the Quotation if the site conditions at the time of execution of work are different from conditions prevailing at the time of inspection or as specified by the Customer.

2. Where site access is restricted, site access must be via an all weather track, of sufficient size for machinery access, unless otherwise stated in the Quotation. No allowance has been made in Quotation for construction of access tracks, unless otherwise stated. Bitu-mill shall not be liable for any direct or indirect loss or damage arising as a result of the access being inadequate to support the necessary machinery.

#### **4. CANCELLATION, DELIVERY, PROPERTY AND RISK**

1. Bitu-mill requires adequate notice from the Customer prior to the commencement of the work. The time required for adequate notice varies throughout the year. No guarantee is given by Bitu-mill that work will commence on the date requested or that work will be completed by any particular date. Bitu-mill will not be liable for any direct or indirect loss or damage in any way arising whatsoever as a consequence of Bitu-mill failing to commence work by any particular date, or by failing to complete the work by any particular date.
2. If the Customer cancels an order through no fault of Bitu-mill, the Customer agrees that it will, on demand, pay Bitu-mill for any expenses that Bitu-mill incurs in connection with the cancelled order.
3. Bitu-mill reserves the right to withdraw the Quotation at any time prior to the commencement of work, with no liability in respect of any costs or expenses, loss or damage whatsoever incurred by the Customer as a consequence.
4. Until payment in full, Bitu-mill shall retain legal and equitable title to all materials and other items into which the materials may be incorporated and the Customer hereby authorises Bitu-mill to re-enter the site for the purpose of retaking delivery if payment is not made when due.
5. Tender of the materials to the work site constitutes delivery of the materials.
6. Any risk related to the materials, whether in the form of degradation of the materials for its intended use, damage to the surrounding environment, or loss, passes to the Customer at the time of delivery of the materials to the Customer.
7. Where unloading of materials is not completed within 20 minutes of tender, Bitu-mill may, at its own discretion, charge the Customer for waiting time or vehicle hire, in respect of the delay for the additional time to unload the materials from the delivery vehicle at a rate determined by Bitu-mill .

#### **5. SHORTAGE OF MATERIALS**

1. Bitu-mill shall not be liable in any manner whatsoever for the delay in delivery or non-delivery of materials (or any costs associated herewith incurred by the Customer) which are attributable to transport delays, unavailability or shortage of materials, plant or equipment breakdown, industrial stoppages or any other cause whatsoever which is beyond the direct control of Bitu-mill .

#### **6. ASPHALT OPERATIONS (Supplementary terms and conditions but not limited to the following)**

1. Pavements not constructed by Bitu-mill , which are shaped outside the adjustable limits of the paver, or undulate, or are deeper than the design depth with respect to expected finished levels, cannot be laid to a consistent design depth. This necessitates the use of extra asphalt. The Customer will be liable to pay for the extra asphalt at the quoted rate.
2. Should the quantity used fall outside the quoted quantity by an amount greater than 10% of the quoted quantity, then Bitu-mill or the Customer is entitled to a re-quote of the item if either party requests a re-quote.
3. Unless otherwise specified, the cost of asphalt tests is not included in the rates.
4. Asphalt tonnage rates are exclusive of any costs associated with jack hammering or profiling. These works can be carried out at additional cost to the Customer.

#### **7. MILLING OPERATIONS (Supplementary terms and conditions but not limited to the following)**

1. Bitu-mill shall not be liable in any manner whatsoever for damage caused to any services that are not clearly identified on the work site.

2. Bitu-mill is not responsible for employing service locating contractors on any work site, and the Customer understands that it is the responsibility of the Customer to locate and mark out all services and other objects that the Customer is aware of or should reasonably be aware of.
3. The customer indemnifies Bitu-mill in respect of any damage to machinery, or losses incurred if a collision with an object, or service occurs, through no fault of Bitu-mill or its representatives.
4. Unless specified otherwise, milling rates does not include cutting concrete.

#### **8. SEALING OPERATIONS (Supplementary terms and conditions but not limited to the following)**

1. Where the work requires Bitu-mill to supply aggregate, the Customer is to nominate a suitable, clean and hard stockpile site at no cost to Bitu-mill .
2. Where the work requires Bitu-mill to cart aggregate to the work site from a stockpile site, the site must be located within three kilometres of the work site, and Bitu-mill reserve the right to apply additional charges for cartage greater than three kilometres from the work site, unless otherwise specified in the Quotation
3. Where the work requires Bitu-mill to load aggregate from a stockpile site, a site suitable for safe mechanical loading is to be supplied, and Bitu-mill will not be responsible for remediation of the site, or any costs incurred to remediate the site.
4. Unless specified otherwise, the Customer is responsible for removing any loose aggregate from the work site.
5. The Customer is responsible for the erection and maintenance of all warning signs at the work site, including "Windscreen Damage" signs.

#### **9. WARRANTIES**

1. The Customer acknowledges that it is responsible for all specifications for the works and that accordingly Bitu-mill gives no warranty and makes no representation that the works specified by the Customer will be fit for purpose.
2. Bitu-mill warrants that:
  - a. it will construct the works in accordance with the Customer's specifications as set out in the Quotation;;
  - b. unless otherwise specified in the Quotation:
    - i. Asphalt material shall be based on Class 320 binder;
    - ii. Other materials and works supplied by Bitu-mill will comply with applicable Australian Standard
  - c. All work shall be free from defects in materials and workmanship for three (3) months from the date of completion, unless specified otherwise in the Quotation;
3. Any claim or dispute in relation to the quality of workmanship or materials delivered must be made in writing to Bitu-mill within seven (7) days of identifying the defect.
4. Warranty will be voided with respect to reflective cracking occurring in asphalt pavements when the cracking is caused by the underlying pavement courses. Where Bitac Strips are placed over underlying cracked pavements prior to the asphalt overlay, warranty will be voided should reflective cracking occur. Bitac Strip is an industry accepted practice for minimising the occurrence of reflective cracking caused by the underlying pavement cracks
5. Warranty will be voided with respect to damage being caused by overloading of the pavement, regardless of cause.
6. Warranty will be voided with respect to damage being caused by excessive moisture ingress in underlying pavement, regardless of cause.

## **10. LIMITATION OF LIABILITY**

1. To the extent that Customer acquires goods or services from Bitu-mill as a Consumer, Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement (Non-excludable Conditions). Nothing in these terms and conditions (including this clause) operates to exclude, restrict or modify the application of any provisions, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
  - (a) contravene that statute; or
  - (b) render any part of this clause or these terms and conditions to be void.
2. Except in relation to Non-excludable Conditions, in no event shall Bitu-mill have any obligation or liability for any exemplary, punitive, incidental, indirect, special or consequential damages (including but not limited to loss of profits, use or goodwill), whether based on contract, tort (including negligence), strict liability, or any other theory or form of action, even if such party has been advised of the possibility thereof. The maximum liability of Bitu-mill (including its subcontractors and agents), if any, for damages relating to the supply of goods and services under this agreement shall be the Total Price paid by the customer.
3. Subject always to the Australian Consumer Law, except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which Bitu-mill's liability is not limited under these terms and conditions. Bitu-mill's liability to Customer for a failure (not being a 'major failure' within the meaning of the Australian Consumer Law) to comply with any Non-exclusive Condition (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law) is limited at Bitu-mill's election to:
  - (a) in the case of goods:
    - I. the replacement of the goods or the supply of equivalent good;
    - II. the repair of the goods;
    - III. the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - IV. the payment of the cost of having the goods repaired;
  - (b) in the case of services:
    - I. the supplying of the services again; and
    - II. the payment of the cost of having the services supplied again.
4. Except for any Non-excludable Conditions and for any express warranties set forth in this document there are no other warranties express or implied by Bitu-mill in respect of the works and materials supplied by Bitu-mill and all such warranties are expressly excluded.

## **11. GENERAL**

1. Bitu-mill reserves the right to vary the rates in the Quotation until such time as a site inspection by a Bitu-mill representative or plans are received and the scope of the works are confirmed.
2. Bitu-mill shall not be responsible for any maintenance after the completion of the work, or after the warranty period Has expired.
3. Bitu-mill shall not be responsible for any property damage caused by carrying out the work unless such damage was caused solely by the negligence of Bitu-mill, its employees or its agents. Bitu-mill must be notified in writing within 24 hours of occurrence of property damage and details of the property damage confirmed in writing within 7 days of occurrence.
4. Clerical and technical errors are subject to correction at any time by Bitu-mill.
5. The Customer shall indemnify Bitu-mill against all claims, damages, demands, penalties, costs, charges and expenses, to which Bitu-mill may become partially or wholly liable through any work required to be done by Bitu-mill, or goods and materials to be supplied by Bitu-mill in accordance with the Customer's specifications.

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## **12. DEFINITIONS**

1. "Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth), as amended from time to time.
2. "Consumer" means a consumer as defined in section 3 of the Australian Consumer Law.
3. "Customer" means the entity who has agreed to accept the Quotation, and for the purpose of executing the works, includes the Customer's employees, agents, sub-contractors.
2. "Quotation" means a proposal by Bitu-mill to the Customer to carry out "works" for an agreed sum of money in accordance with these Standard Terms and Conditions..
3. "works" or "work" means the whole of the work, including provision of materials, to be carried out and completed in accordance with the Quotation, including variations.
4. "work site" or "site" means the lands and other places to be made available, and any other lands and places made available to Bitu-mill by the Customer for the purpose of completing the works in the Quotation.
5. "project specific conditions" means conditions by which "works" are to be carried out, as set out in the "Quotation"
6. "charge" means a monetary sum applied to the Customer's account or bill.
7. "Total Price" means the monetary figure shown in the Quotation.