

**1.0 DEFINITIONS**

“*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.

“*Bild Group*” includes the following entities Bild Group Pty Ltd, Bitu-mill Pty Ltd, Bild Infrastructure Pty Ltd, Bild Services Pty Ltd and Bild Equipment Pty Ltd (“Bild Group”)

“*Consumer*” means a consumer as defined in section 3 of the Australian Consumer Law.

“*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.

“*Defects Liability Period*” – Unless specified otherwise, Twelve (12) months from completion of the works.

“*Quotation*” means a proposal by Bild Group to the Customer to carry out works for an agreed sum of money in accordance with these Standard Terms and Conditions.

“*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.

“*work site*” or “*site*” means the lands and other places to be made available, and any other lands and places made available to Bild Group by the Customer for the purpose of completing the works in the Quotation.

“*Project Specific Conditions*” means conditions by which works are to be carried out, as set out in the Quotation.

“*charge*” means a monetary sum applied to the Customer’s account or bill.

“*Total Price*” means the monetary figure shown in the Quotation.

**2.0 PRICE & PAYMENT**

**2.1 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. Bild Group 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 Bild Group. 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 Bild Group 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, Bild Group reserve the right to revise the quoted rate to allow for recovery of the fixed cost of its paving crew.

**2.2 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 onsite 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.

2.3 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.

2.4 The Quotation may be in the form of a Lump Sum, a Lump Sum with Unit Rates, or a Schedule of Unit Rates.

- a) 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.

- b) 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.

- c) 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.

- d) For items quoted on number basis, the quantity will be based on the number of items installed or supplied.

2.5 Payment is required immediately upon completion of the works, unless a credit application has been accepted prior by Bild Group. Upon completion of the works, all outstanding balances, including extras must be paid within thirty (30) days from the end of the month in which the services have been provided, unless otherwise stated.

2.6 No deductions or retentions whatsoever shall be made by the Customer unless stated in the Quotation.

2.7 Bild Group reserves the right to charge interest on any overdue amounts at a rate equal to 2% above the current overdraft rate charged to Bild Group by its bankers. Bild Group also reserves the right to suspend further works until all amounts outstanding (including interest) have been paid in full.

2.8 If required by Bild Group, the Customer shall provide security in the form an unconditional bank guarantee for the Total Price, or in a form acceptable to Bild Group.

**3.0 SPECIFICATIONS**

3.1 Unless otherwise stated by Bild Group in the project specific conditions, materials and works will comply with VicRoads Specifications (12/06) of Dense Grade Asphalt. Materials and Works outside the scope of VicRoads Specifications will be in accordance with the relevant Australian Standard if one is available.

3.2 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%, Bild Group will not warrant any work for ponding of water.

3.3 Testing will not be automatically carried out but will only be done if requested by the Customer prior to delivery.

- 3.4 It is agreed by the Customer that Bild Group 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.

3.5 Any specific specification required by the Customer in respect of the materials supplied shall be stated in the Quotation and confirmed by Bild Group. 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

3.6 Unless specified otherwise, and agreed to in writing, Bild Group 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.

**4.0 SITE & ACCESS**

4.1 Bild Group 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 and quotation or as specified by the Customer.

4.2 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 the Quotation for construction of access tracks, unless otherwise stated.

4.3 Bild Group shall not be liable for any direct or indirect loss, damage or remedy costs arising as a result of the access being inadequate to support the necessary machinery.

**5.0 CANCELLATION, DELIVERY, PROPERTY AND RISK**

5.1 Bild Group 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 Bild Group that work will commence on the date requested or that work will be completed by any particular date. Bild Group will not be liable for any direct or indirect loss or damage in any way arising whatsoever as a consequence of Bild Group failing to commence work by any particular date, or by failing to complete the work by any particular date.

5.2 If the Customer cancels an order through no fault of Bild Group, the Customer agrees that it will, on demand, pay Bild Group for any expenses that Bild Group incurs in connection with the cancelled order

5.3 Bild Group 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.

5.4 Until payment in full, Bild Group shall retain legal and equitable title to all materials and other items into which the materials may be incorporated and the Customer hereby authorises Bild Group to re-enter the site for the purpose of retaking delivery if payment is not made when due.

5.5 Tender of the materials to the work site constitutes delivery of the materials.

5.6 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.

5.7 Where unloading of materials is not completed within 20 minutes of tender, Bild Group 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 Bild Group.

**6.0 SHORTAGE OF MATERIALS**

6.1 Bild Group 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 Bild Group.

**7.0 ASPHALT OPERATIONS**

(Supplementary terms and conditions but not limited to the following)

7.1 Pavements not constructed by Bild Group, 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.

7.2 Should the quantity used fall outside the quoted quantity by an amount greater than 10% of the quoted quantity, then Bild Group or the Customer is entitled to a re-quote of the item if either party requests a re-quote. Unless otherwise specified, the cost of asphalt tests is included in the rates.

7.3 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.

**8.0 MILLING OPERATIONS**

(Supplementary terms and conditions but not limited to the following)

8.1 Bild Group shall not be liable in any manner whatsoever for damage caused to any services that are not clearly identified on the work site.

8.2 Unless specifically included on the Quotation Bild Group 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.

8.3 The customer indemnifies Bild Group in respect of any damage to machinery, property, or losses incurred if a collision with an object, or service occurs, through no fault of Bild Group or its representatives.

8.4 Unless specified otherwise, milling rates does not include cutting concrete.

**9.0 SEALING OPERATIONS**

(Supplementary terms and conditions but not limited to the following)

9.1 Where the work requires Bild Group to supply aggregate, the Customer is to nominate a suitable, clean and hard stockpile site at no cost to Bild Group.

9.2 Where the work requires Bild Group to cart aggregate to the work site from a stockpile site, the site must be located within three kilometres of the work site, and Bild Group reserve the right to apply additional charges for cartage greater than three kilometres from the work site, unless otherwise specified in the Quotation.

- 9.3 Where the work requires Bild Group to load aggregate from a stockpile site, a site suitable for safe mechanical loading is to be supplied, and Bild Group will not be responsible for remediation of the site, or any costs incurred to remediate the site.
- 9.4 Unless specified otherwise, the Customer is responsible for removing any loose aggregate from the work site.
- 9.5 The Customer is responsible for the erection and maintenance of all warning signs at the work site, including Windscreen Damage signs.

**10.0 WARRANTIES**

- 10.1 The Customer acknowledges that it is responsible for all specifications for the works and that accordingly Bild Group gives no warranty and makes no representation that the works specified by the Customer will be fit for purpose.
- 10.2 Bild Group 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 Bild Group will comply with VicRoads specifications (12/06) of Dense Grade Asphalt and, where no such specification exists, in accordance with any 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;
- 10.3 Any claim or dispute in relation to the quality of workmanship or materials delivered must be made in writing to Bild Group within seven (7) days of identifying the defect.
- 10.4 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.
- 10.5 Warranty will be voided with respect to damage being caused by overloading of the pavement, regardless of cause.
- 10.6 Warranty will be voided with respect to damage being caused by excessive moisture ingress in underlying pavement, regardless of cause.

**11.0 LIMITATION OF LIABILITY**

- 11.1 To the extent that Customer acquires goods or services from Bild Group 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.

- 11.2 Except in relation to Non-excludable Conditions, in no event shall Bild Group 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 Bild Group (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.

- 11.3 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 Bild Group's liability is not limited under these terms and conditions. Bild Group'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 Bild Group'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:
    - v) the supplying of the services again; and
    - vi) the payment of the cost of having the services supplied again.
  - c) 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 Bild Group in respect of the works and materials supplied by Bild Group and all such warranties are expressly excluded.

**12.0 GENERAL**

- 12.1 Bild Group reserves the right to vary the rates in the Quotation until such time as a site inspection by a Bild Group representative or plans are received and the scope of the works are confirmed.
- 12.2 Bild Group shall not be responsible for any maintenance after the completion of the Defects Liability Period, or after the warranty period has expired.
- 12.3 Bild Group shall not be responsible for any property damage caused by carrying out the work unless such damage was caused solely by the negligence of Bild Group, its employees or its agents. Bild Group 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.
- 12.4 Clerical and technical errors are subject to correction at any time by Bild Group.
- 12.5 The Customer shall indemnify Bild Group against all claims, damages, demands, penalties, costs, charges and expenses, to which Bild Group may become partially or wholly liable through any work required to be done by Bild Group, or goods and materials to be supplied by Bild Group in accordance with the Customer's specifications.