

BGC (AUSTRALIA) PTY LTD TRADING AS BGC BRIKMAKERS CONDITIONS OF QUOTATION AND SUPPLY

In these terms and conditions (Terms)

- **Company** means BGC (Australia) Pty Ltd (ACN 005 736 005) trading as Brikmakers.
- **Purchaser** means the entity placing an order for the material referred to on the Quote.
- **Quote** means the quotation form issued by the Company to the Purchaser, and if more than one such form is issued, means the latest such form. If an order is placed over the telephone, and a written Quote is not issued prior to acceptance of the order, the Quote shall be the Company's records of the phone order, and includes the Company's delivery docket.

A. Basis of Quote

1. This quotation remains valid for 30 days from the date on the Quote. Any extension of validity is at the discretion of the Company.
2. The price quoted is based on current costs, but will remain firm if:
 - accepted within 30 days of the date of the quotation; and
 - it was provided after an inspection by the Company of the area that is proposed to be paved. If the quotation was provided without a site inspection by the Company then the Purchaser agrees to pay the Company the price charged by the Company for the supply of any extra product, labour and materials not provided for in the Quote so as to cover the actual area required to be paved, after allowing for cuttage and wastage.
3. In providing the Quote, the Company has allowed for sufficient paving bricks and materials to cover the inspected and estimated area that is proposed to be paved, after allowing for cuttage and waste. The Purchaser acknowledges and agrees that in accepting this Quote if, after the quoted area has been paved, there is an excess of product and other material remaining at the delivery site then these remaining product and materials at the completion of the job remain the property of the Company.
4. Subject to the availability of the product or unless there are unforeseen circumstances beyond the control of the Company, the lead time for the supply and installation of the product is three weeks from the date of payment of the deposit. Upon payment of the deposit the delivery date will be confirmed. If the Purchaser require delivery less than the stipulated time, the Purchaser must pay the reasonable costs of the Company accelerating its order, in addition to the price quoted.
5. The Quote sets out the specific products being quoted. Any change to any detail of the products or how they are to be installed may result in a price change.
6. If the Purchaser or the Purchaser's builder has provided the Company with information about the relevant conditions and other information relating to the design of the building or the installation of the product, the Company has relied upon that information in making any recommendation. If any information provided was incorrect or incomplete, the Company is not liable for any failure of the product to perform arising from incorrect selection of product.
7. Acceptance of this Quote and these conditions must be in writing, and may be made by signing below or by an order form referring to the quotation number. The Quote has been made on the basis of these conditions, and all supply of product has been made on the basis of these conditions.

B. Quality of Product

1. The Company shall not be liable for and is hereby released from and indemnified by the Purchaser in respect of any claims made by the Purchaser or any third party which arise out of any defects which may develop in the product, or any other claims due to:
 - (a) faulty handling or placement of the materials by the Purchaser or any person other than the Company;
 - (b) the incorrect selection of, or specifications for the product and any additives for the required use, situation and conditions, except to the extent that the Company has made such selection (in which case, this indemnity and release applies to the extent that any information supplied by the Purchaser as to the use, situation and conditions is incorrect);
 - (c) the base on which the bricks/paving is laid being unsuitable or defective in any way;
 - (d) any vehicle (other than the Company's) not being suitable to carry and maintain the product in good condition (and including the vehicle being unable to properly and safely carry the product);
 - (e) the Purchaser ordering an amount of product that is not sufficient for proper coverage of the area to be covered; and
 - (f) traffic management at the site.
2. Purchasers are responsible to ensure that the characteristics shown on the Quote are in accordance with their requirements and any required specification.
3. Unless otherwise agreed in writing, the Company when giving the Quote or supplying any product will not be taken to have approved any specification as being suitable for any particular purpose and will not be liable for any loss or delay (or the costs associated with the delay) resulting from any defects in or unsuitability of the specifications.
4. In the event of the Purchaser purchasing non-conforming products (eg. seconds, non-Company products), the Purchaser shall pay an extra laying charge based on the nature of the work to be completed. The Company may classify products as non-conforming in its absolute discretion. While the Company will endeavour to lay non-conforming products to meet industry standards, the Company provides no warranty that the laying of non-conforming products will meet industry standards due to non-conforming characteristics of those products.
5. The Company provides no warranty that the product ordered by the Purchaser and supplied by the Company by trade description will match the colour of existing paving bricks, photographs of paving bricks in brochures or paving brick samples of the same trade description. The colours and texture of paving brick vary within the same trade description. This is not a quotation by sample. The Purchaser agrees that the Company will not be liable to the Purchaser for such variation in colour or texture.

C. Delivery and Site

1. Unless sub-base is provided by Brikmakers, the Purchaser must ensure that the base on which the product is to be laid is in good condition, properly compacted and graded, and suitable to receive the product as at the time of delivery, and suitable for the anticipated traffic loading after laying of the product. If the base is not in accordance with the above conditions then, subject to the Company using reasonable endeavours to mitigate its loss, the Purchaser must pay the Company's reasonable costs and expenses incurred as a result of the Purchaser's failure to comply with this clause and release the Company for any loss or damage arising from the condition of the base.
2. The Purchaser must provide uninhibited access to delivery sites. The Purchaser indemnifies and releases the Company against all claims arising from a lack of uninhibited access. The Purchaser agrees that any price quoted by the Company was on the basis of uninhibited access being provided to the delivery site and in addition to the price quoted the client shall pay the price charged by the Company for any waiting time or time incurred by the Company in obtaining uninhibited access to the delivery site.
3. The Purchaser is responsible for providing a suitable area for the waste bin and brick cutting machine (if required) and for providing access to water and power. The Purchaser agrees that any price quoted by the Company was on the basis of a suitable area for the waste bin and brick cutting machine (if required), and access to water and power being provided. In addition to the price quoted, the Purchaser shall pay the price charged by the Company to remedy the Purchaser's breach of this clause.
4. The Purchaser is responsible for ensuring that no unauthorised material is put into the waste bin. If unauthorised material is put into the waste bin and surplus materials and waste from the paving installation do not fit in the bin, the Purchaser is liable for any extra cost incurred in disposing of the surplus materials and waste.
5. The Purchaser is responsible for all traffic management at the site, and shall ensure that the Company is not impeded in its delivery or laying of the product by those arrangements. The Purchaser agrees to comply at all times with the relevant road transport laws of Western Australia and assumes all liability as a receiver of the product upon delivery.
6. The Purchaser authorises the Company's driver to place the bricks/pavers in the area the Purchaser has requested. The Purchaser understands and accepts that:
 - the weight of the delivery vehicle is substantial and that most domestic pavements are incapable of supporting this weight; and
 - damage may be caused to my property and third party property (such as pavements, underground soak wells, septic tanks or other buried services) by the Company placing the product in the area that the Purchaser has requested.
7. The Company shall not be liable for and is hereby released from and indemnified by the Purchaser in respect of:
 - loss or damage to the Purchaser or the Company's property;
 - loss or damage in respect of personal injury or death to any person; and
 - claims by third parties against the Company in respect of loss or damage to any property, death or personal injury, arising out of or in connection with the Company placing the product

in the area that the Purchaser has requested.

8. The Purchaser acknowledges that it understands and accepts that, despite its request, the Company's driver may in his/her absolute discretion place the product on the verge.
 9. The Company shall not be responsible if the paving laid by the Company or its subcontractor subsides due to external factors beyond the Company's control such as the paving bricks being in close proximity to excavated areas around the perimeter of below ground pools, soak wells, leaking water services etc.
- ### D. Property & Risk
1. Risk in the product passes to the Purchaser on the earlier of delivery to site, collection of the products from the Company's premises specified on the Quote by the Purchaser or its road carrier, or delivery to any designated freight depot in Perth, whether or not they have been paid for in full. If the site is unattended at the time of delivery, the Company may leave the goods on site, and shall not be responsible for any loss, damage or theft after delivery.
 2. Property of the product will not pass to the client until such time as the product is paid for in full. Until the Company receives payment in full for the product supplied by it:
 - (a) the Purchaser shall store the paving bricks and other material in such a manner as to show clearly that they are the property of the Company;
 - (b) the Company may enter upon the Purchaser's premises or elsewhere to take possession of and remove the product;
 - (c) in the event that the Purchaser uses the product in some manufacturing or construction process of its own or some third party, then the Purchaser shall hold such part of the process of such manufacturing or construction process as relates to the product in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owed by the Purchaser to the Company at the time of the receipt of such goods.
 3. The purchaser is required to locate any underground services (including reticulation) within the vicinity of the paving works to be conducted on the site and to inform the Company of any underground services (including reticulation) before commencement of the works. The Company or its subcontractors shall not be liable for any damage that may occur while conducting earth works on site, including but not limited to damage or disruption to services (including reticulation). The Purchaser shall indemnify the Company and its subcontractors with respect to any such damage.
 4. Unless specifically agreed with the Company and included in the Quotation, the responsibility of commissioning and decommissioning the reticulation system is the responsibility of the Purchaser.

E. Price / Payments

1. The Company's standard trading hours are Monday to Friday from 7.00am to 4.00pm excluding public holidays. Deliveries and works will be performed only within these trading hours. Any requested delivery times must allow for the preparation of product, delivery, laying (where relevant) and travel time (to and from site) within those periods. For any product ordered and later cancelled the Purchaser shall forfeit its deposit to the Company.
2. For any product ordered and later cancelled the Purchaser shall forfeit its deposit to the Company.
3. The Purchaser must pay the reasonable costs of all variations to orders in addition to the price quoted. The reasonable costs of a variation will be calculated by the Company at reasonable rates for labour and materials and will include a reasonable administration charge, allowance for overheads and profit and other costs incurred by the Company as a result of the variation.
4. Terms of payment are strictly net 30 days for previously approved accounts only, and in all other cases are cash up front.
5. In the event of any dispute arising between the Company and the Purchaser in respect of any amount payable, the Purchaser shall pay to the Company the amount claimed by the Company and any disputed amount shall be held by the Company until determination of the dispute.

F. Claims

1. Any claim about any delivery, defective paving bricks, material or workmanship must be made within 24 hours of such delivery or work and be confirmed in writing to the Company within 7 days. The Company will not be liable for any claims not so made and confirmed.
 2. In the event of any material or services supplied by the Company under this contract being defective, the liability of the Company (if any) shall to the extent permitted by statute be limited to:
 - (a) in the case of goods, replacement of such defective material; and
 - (b) in the case of services, the supplying of the services again. Where the Company is unable to replace the goods or resupply the services, the Company's liability shall be limited to the price paid by the Purchaser in respect of the Quote.
 3. To the extent permitted by statute, the Company and the Purchaser shall not be liable to the other for any indirect or consequential loss or damage of any nature whatsoever.
- ### G. Termination
1. The Purchaser may terminate this agreement if the Company fails to deliver the product or complete the job within a reasonable period after the quoted time.
 2. If the Purchaser terminates this agreement pursuant to this clause:
 - (a) the Company will return all monies paid to it by the Purchaser to the Purchaser; and
 - (b) the Company shall be entitled to enter upon the Purchaser's premises or elsewhere to take possession of and remove the product.
 3. If the Purchaser commits any breach of this agreement, the Company may, without prejudice to any other rights that it may have under the Contract or at law, terminate this agreement.
 4. If the Company terminates this agreement pursuant to this clause, the Purchaser will forfeit its deposit to the Company and will be liable to pay for any product already supplied or installed.

H. General

1. The actions or signatures of any person appearing to have the authority of the Purchaser to do so shall bind the Purchaser, including any person accepting delivery of the materials.
2. All materials sold by the Company are sold on these terms and any conditions printed on any written order placed by the Purchaser are of no force or effect, unless signed by an employee of the Company with a job title including the word "Manager". No other employee, agent or contractor of the Company has the authority to agree to terms and conditions that differ from these standard terms.
3. These terms and conditions cannot be altered except in writing by agreement between the Company and the purchaser.
4. A statement signed by the Company's authorised representative, certifying the amount of any increased cost or other claim by the Company shall in the absence of manifest error be conclusive and binding.
5. Any obligation to supply and/or supply-lay product is entered into by the Company upon the express condition that the Company has the right to suspend or withhold deliveries during any period of prevention or delay attributable to the following causes and, in all such cases, without responsibility to the Company – war, fires, accidents, explosions, earthquakes, floods, riots, mutinies, lockouts, strikes, combinations of workmen, breakdown of plant or delivery, equipment, fog, inclement weather, peril of sea or rivers, shipping delays, railways delays, road transport delays, unavailability or shortage of materials, labour or transportation, or any other cause beyond the reasonable control of the Company or its suppliers.
6. Where any obligation is placed on a party, it shall ensure that its employees, servants, contractors, agents and other persons acting on its behalf comply with that obligation. If any party to this agreement compromises two or more parties, each of those parties is jointly and severally liable on the covenants and obligations herein.
7. Where an indemnity, release or right is given to a party, that indemnity, release or right is also given to the party's employees, servants, contractors and agents.
8. The items contained herein represent the entire agreement between the parties. The parties agree that they do not rely upon any other term of representation not expressly contain herein. All other guarantees, warranties, undertakings or representations expressed or implied and whether arising by statute or otherwise are hereby expressly excluded (except to the extent only that such exclusion is prohibited by statute) and subject to the last mentioned exception these terms and conditions are the only terms and conditions of the contract between the Company and the Purchaser.

These terms and conditions are to be read in conjunction with the rights and remedies conferred on the purchaser by the Australian Consumer Law and similar Sates and Territory Laws.

Purchaser's signature _____

Date _____