

# Terms and Conditions

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## 1. General

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- (a) The following documents will form this agreement between Civil Independence Industries ACN 621 542 881 (**Company**) and you (the **Customer**):
- (i) any Quote or purchase order to which these terms apply;
  - (ii) these terms; and
  - (iii) where the Customer has entered into any Credit Terms with the Company, those Credit Terms; and

and any ambiguity or discrepancy between the documents will be resolved in the same order of precedence as the documents listed above (the **Terms**).

## 2. Provision of Work

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### 2.1 Quotes

- (a) In accordance with these Terms, the Customer may request the Company provide a Quote for the Work.
- (b) A Quote will remain valid for the period stated on the Quote, and if no period is stated, 30 days from the date the Quote is provided to the Customer.
- (c) Each Quote will be deemed to be a separate offer by the Company to provide the Work to the Customer in accordance with these Terms.
- (d) A Quote will become binding on the parties once accepted by the Customer (**Accepted Quote**). Acceptance may only be in the form of written acknowledgement or payment of a related invoice.

### 2.2 Cancellations and variations

- (a) Subject to clause 2.2(b), either party may cancel an Accepted Quote with at least 2 Business Days written notice prior to the date Work is scheduled to commence.
- (b) Where the Customer fails to comply with clause 2.2(a), the Customer must pay the Company its reasonable costs incurred in anticipation of performance of the Works.
- (c) Any variations to an Accepted Quote must first be agreed in writing.

## 3. Goods

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### 3.1 General

- (a) The Company agrees to supply to Goods to the Customer in accordance with these Terms.
- (b) The Goods supplied to the Customer under these Terms must:
  - (i) be of merchantable quality;
  - (ii) be free from material defects in materials, workmanship and installation;
  - (iii) comply with any specifications in the Accepted Quote; and
  - (iv) comply with all applicable laws or regulatory requirements.

### 3.2 Delivery and acceptance

- (a) The Company will use reasonable endeavours to deliver the Goods to the Customer by the agreed delivery date. Notwithstanding the foregoing, the Customer acknowledges and agrees that the Company:
  - (i) does not guarantee fixed Delivery times; and
  - (ii) is not responsible for delays in Delivery of the Goods resulting from any delay caused by the Customer, acts or omissions of any third party or third party service or equipment providers (excluding any contractors engaged by the Company).
- (b) Delivery of the Goods is deemed to occur when the Goods are delivered to the Customer's site (**Delivery**).
- (c) The Customer must inspect all Goods upon Delivery and promptly give the Company notice if the Customer reasonably considers there is any defect or damage to the Goods or failure to comply with the Accepted Quote, or in case of any latent defect, notice must be given within 5 days of the latent defect becoming apparent.
- (d) Where the Customer does not unload the Goods within 20 minutes of Delivery occurring, the Company may, at its discretion, charge the Customer for the direct costs incurred as a result of the additional waiting time or vehicle hire.

### 3.3 Title and risk

- (a) The Customer bears all risk of damage to or loss of the Goods upon Delivery.
- (b) Title to the Goods will pass to the Customer upon full payment of the total price set out in the Accepted Quote (**Price**).
- (c) The Customer acknowledges that until title in the Goods pass to the Customer, the Company has a right to call for or recover the Goods at its option and the Customer is obliged to deliver up the Goods if so directed by the Company.

## 4. Installation

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### 4.1 General

- (a) The Company agrees to install the Goods for the Customer at the nominated site in accordance with these Terms (**Works**).
- (b) The Works provided by the Company to the Customer must:
  - (i) be undertaken with due care and skill;
  - (ii) be free from material defects;
  - (iii) comply with any specifications in the Accepted Quote; and
  - (iv) comply with all applicable laws or regulatory requirements.

### 4.2 Site conditions and access

- (a) Prior to installation of the Goods, the Customer must:
  - (i) ensure the nominated site is adequately and appropriately prepared to allow the Company to undertake the Works including that the nominated site is accessible and will support any equipment used by the Company to provide the Works;
  - (ii) indicate to the Company the location of any services and facilities at the nominated site; and
  - (iii) provide to the Company all reasonable information and documents in relation to the nominated site.
- (b) The Customer acknowledges and agrees that the Company will not undertake any site testing unless requested by the Customer prior to the installation of the Goods (and as agreed to by the Company in its sole discretion).
- (c) The Customer must grant the Company access to the nominated site as reasonably

required in order to deliver the Goods and undertake the Works.

- (d) The Company agrees to comply with the Customer's reasonable directions in relation to access of the site. However, the Company may determine in its sole discretion whether to proceed with the Works in the event of adverse climactic conditions, including but not limited to, wind, storms, lightning, and other severe, unpredictable weather conditions.

## 5. Additional terms for specific Work

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### 5.1 Asphalt operations

- (a) The Customer acknowledges and agrees that additional asphalt may be required where pavements that have not been constructed by the Company are shaped outside the adjustable limits of the paver, undulate, are deeper than the design depth with respect to finished levels or, cannot be laid to a consistent design depth.
- (b) Where the additional asphalt required is less than 10% of the quantity set out in an Accepted Quote, the Customer must pay the cost for the additional asphalt at the unit price set out in the Accepted Quote.

### 5.2 Milling operations

- (a) The Customer will be liable for the cost of any requirements in respect of fire ants, including the requirements under the *Biosecurity Act 2014* (Qld).
- (b) Where the Company has allowed for the removal of spoil off site, the Company has assumed that the material has been inspected and the Customer has obtained a movement certificate to allow the material to be transport outside of a restricted area.

### 5.3 Sealing operations

- (a) Where the Work requires the Company to supply and stockpile aggregate on site:
  - (i) the Customer must nominate a suitable, clean and hard stockpile site at no cost to the Company (**Stockpile Site**);
  - (ii) the Stockpile Site must be located within three kilometres of the nominated site for the Work;
  - (iii) the Stockpile Site must be suitable for mechanical loading; and
  - (iv) the Company will not be responsible for remediation of the Stockpile Site or any costs incurred to remedy the Stockpile Site.

- (b) Unless otherwise agreed in writing, the Customer is responsible for:
  - (i) removing any loose aggregate from the Stockpile Site; and
  - (ii) the erection and maintenance of all warning signs at the nominated Work Site, including 'windscreen damage' signs.

- (e) Where:
  - (i) a price per unit of weight is stated on the Quote, the quantity will be based on the weight shown on the delivery docket;
  - (ii) a price per cubic metre is stated:
    - (A) for bitumen sealing, the quantity will be based on the area of work completed divided by the spread rate; and
    - (B) for excavation of material, the quantity will be based on the measure of actual surface area, measured to include grade changes of the completed Work;
  - (iii) a price per unit of length is stated, the quantity will be based on the measurement of the total length of the work completed, measured to include curves and changes in grade; and
  - (iv) Goods are quoted on a number basis, the quantity will be based on the number of items installed or supplied.

## **6. Price and payment**

### **6.1 Calculation of Price**

- (a) The Price is inclusive of:
  - (i) where specified in a Quote, transport costs;
  - (ii) labour; and
  - (iii) materials.
- (b) The Customer acknowledges and agrees that the Price is calculated based on the following assumptions:
  - (i) Work will be performed 7.00am to 4.00pm, Monday to Friday (excluding public holidays);
  - (ii) the site details and conditions provided by the Customer are accurate; and
  - (iii) all measured areas and project particulars provided by the Customer are accurate.
- (c) The Price does not include:
  - (i) any Goods or services not specified in a Quote;
  - (ii) provision for site specific conditions or allowances, unless otherwise specified in a Quote;
  - (iii) the cost of inductions for crews, except for a site induction prior to the commencement of the Work of up to 20 minutes. Time in excess of this will be charged at \$100 per hour, per crew member or part thereof; and
  - (iv) the costs of any site testing, which will be the sole responsibility of the Customer, unless otherwise agreed.
- (d) Where bitumen is being supplied, the Customer acknowledges and agrees that this is subject to the rise and fall of the general market price of bitumen (calculated in accordance with the Department of Transport and Main Roads' bitumen price index published online) and the Company reserves the right to amend the Price to reflect this.

### **6.2 Payment terms**

- (a) If the Company has granted credit facilities to the Customer in accordance with the Credit Terms, payment of the Price must occur within 30 days from the date of an invoice from the Company to the Customer.
- (b) If the Customer has not been granted credit facilities in accordance with the Credit Terms, payment of the Price must occur as follows:
  - (i) 90% of the Price upon an Accepted Quote being agreed by the parties and in any event prior to commencement of the Work; and
  - (ii) the remaining 10% of the Price upon completion of the Work.
  - (iii)
- (c) Without limiting any other remedies available to the Company, where you fail to pay the Price in accordance with the Credit Terms or these Terms (as applicable), the Company reserves the right to charge interest daily at a rate of 1% per calendar month on any overdue amounts from the date when payment becomes due.

### 6.3 Set off

The Company may, without limiting any rights or remedies it may have under these Terms, set-off any amounts owed to it by the Company under these Terms against any amount payable to you by the Company.

### 6.4 Bank guarantee

The Company may, in its sole discretion, require the Customer to provide a bank guarantee (in a form acceptable to the Company) for the Price.

## 7. GST

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- (a) Any terms used in this clause 7 that are not otherwise defined in these Terms have the meaning given in the GST Act.
- (b) If GST applies to any supply made under or in connection with these Terms, the supplier may, in addition to any amount or consideration payable under these Terms, recover from the recipient an amount on account of GST, such amount is to be calculated by multiplying the amount or consideration payable by the recipient for the supply by the prevailing GST rate.
- (c) Any additional amount on account of GST recoverable from the recipient under this clause will be calculated without any deduction or set-off of any other amount and is payable by the recipient.

## 8. Limited Warranty and exclusion of liability

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### 8.1 Limited Warranty

- (a) The Company warrants that the Work will be free from defective materials and workmanship for 3 months from the date of completion, unless otherwise specified in the Accepted Quote (**Limited Warranty**).
- (b) The Limited Warranty will not apply where:
  - (i) reflective cracking occurs in asphalt pavements where the cracking is caused by underlying payment causes;
  - (ii) reflective cracking occurs where bitac strips are placed over underlying cracked pavements prior to the asphalt overlay;
  - (iii) where damage to the Work occurs due to overloading of the pavement, spillages or damages; and
  - (iv) where damage to the Work occurs by excessive moisture ingress in the underlying pavement.
- (c) Where the Customer believes that the Work is defective and covered by the Limited Warranty, the Customer must contact the Company within 7 days of becoming aware of the defect and provide all reasonable

information in writing for the Company to assess the claim.

### 8.2 Exclusion of liability

- (a) As far as the law permits and unless otherwise specified in these Terms,
  - (i) the Customer is solely responsible, as against the Company, for any opinions, recommendations, or other conclusions made or actions taken by the Customer or any other third party (based wholly or in part) on the results obtained from the Work;
  - (ii) the Company will have no liability for any Loss or damage caused by errors or omissions in any information or instructions provided by the Customer in connection with the Goods or Works or as a result of the Company performing the Work in accordance with the Customer's specifications; and
  - (iii) all warranties, representation, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from these Terms.

### 8.3 Maximum liability

- (a) Subject to clause 8.3(b) and to the maximum extent permitted by law, the Company's total aggregate liability to the Customer for any Loss or Claims arising out of or in connection with these Terms, whether in contract, tort (including negligence) under statute or otherwise is limited in the aggregate to the total Price paid for the Work.
- (b) Clause 8.3(a) will not limit or exclude the liability of the Company arising from:
  - (i) fraudulent misrepresentation or wilful misconduct; or
  - (ii) any liability that cannot be excluded by law.

### 8.4 Consequential Loss

- (a) Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with these Terms.

### 8.5 Mitigation

Each party must mitigate any loss they suffer as a result of the breach of the other party to these Terms or any warranty or indemnity provided under these Terms.

## 8.6 Australian Consumer Law

- (a) If the Company breaches any guarantee under the Australian Consumer Law that applies to the supply of the Goods or services to the Customer and the Company's liability can be limited, to the maximum extent permitted by law, the Company's liability for a failure to meet a consumer guarantee is limited to:
- (i) for services, the supplying of the services again or payment of the cost of having the services supplied again;
  - (ii) for goods:
    - (A) the replacement of the goods or supply of equivalent goods;
    - (B) the repair of the goods; or
    - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - (D) the payment of the cost of having the goods repaired.

## 9. Force Majeure

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- (a) A party will not be liable for any delay or failure to perform any of its obligations under an Accepted Quote if, as soon as possible after the commencement of a Force Majeure Event affecting the ability of the party to perform such obligations, it gives notice to the other party that:
- (i) specifies the obligations the party cannot perform and fully describes the Force Majeure Event;
  - (ii) estimates the time during which the Force Majeure Event will continue; and
  - (iii) specifies the measures proposed to be adopted to mitigate, remedy or abate the Force Majeure Event.
- (b) The party that is prevented from carrying out its obligations as a result of a Force Majeure Event will resume performance of its obligations as soon as reasonably practicable.

## 10. Notices

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- (a) A notice, consent or communication under these Terms must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and delivered by hand, sent by prepaid mail or sent by email to that person's address as specified in the Parties section of this document or as the person notifies the sender.

- (b) A notice, consent or communication is given and received:
- (i) if it is hand delivered, on the day it is given;
  - (ii) if it is sent by post, three Business Days after posting (if within Australia) or seven Business Days after posting (if outside Australia); and
  - (iii) if it is sent by email, that day, if the time of departure from the sender's mail server is before 5.00pm on a business day, or the next Business Day in any other case, unless the sender receives an automated message generated by the recipient's mail server (other than an 'out of office' message or other response generated by or at the instigation of the recipient) that the email has not been delivered within two hours.

## 11. General

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### 11.1 Amendments

These Terms may only be amended by written agreement between all parties.

### 11.2 Assignment

A party may only assign these Terms or a right under these Terms with the written consent of the other party whose consent may not be unreasonably withheld.

### 11.3 No merger

The rights and obligations of the parties under these Terms do not merge on completion of any transaction contemplated by these Terms.

### 11.4 Entire agreement

These Terms supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.

### 11.5 No waiver

- (a) The failure of a party to require full or partial performance of a provision of these Terms does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under these Terms may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

## 11.6 Governing law and jurisdiction

Queensland, Australia law governs these Terms and each party irrevocably submits to the non-exclusive jurisdiction of the Queensland, Australia courts and courts competent to hear appeals from those courts.

## 11.7 Severability

If any provision of these Terms is declared or found to be illegal, unenforceable or void, then such provision will be null and void and may be severed from these Terms but each other provision not so affected will be enforced to the full extent permitted by applicable law

## 11.8 Costs

Each party bears its own costs in relation to the preparation and signing of these Terms.

## 11.9 Relationship between the parties

The relationship between the parties is one of independent contractor and principal and this document does not create a partnership, joint venture, agency or employer-employee relationship between the parties.

## 12. Defined Terms and Interpretation

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### 12.1 Defined terms

In these Terms, unless otherwise defined:

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Queensland, Australia.

**Claim** means any claim, action, suit, cause of action, demand or proceedings for any Loss including any such claim by way of indemnity, under contract (including any breach of this document), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).

**Consequential Loss** means any consequential, special, indirect or incidental loss including without limitation loss of profit, loss of use of or damage to Goods, loss of revenue, business interruption, loss of business, loss of opportunity, loss of reputation or loss in connection with breach of third party contracts or arrangements.

**Credit Terms** means the payment terms contained in the Company's credit application terms.

**Force Majeure Event** means a matter beyond the reasonable control of a party and includes without limitation an act of God, national emergency, terrorist act, sabotage, flood, storm, earthquake,

fire, explosion, epidemic, pandemic, civil disturbance, insurrection, riot, war, industrial action, lockout, rebellion, quarantine, embargo and other similar governmental action or a general and continued energy shortage, power or utilities interruption.

**Goods** means the goods specified in a Quote.

**Loss** includes any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under contract, in equity, under statute (to the maximum extent possible), in tort (including for negligence) or otherwise.

### 12.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to '\$' or 'dollar' is to Australian currency; and
- (j) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such

as', or 'for example' (or similar phrases) do not limit what else might be included.