

Suncoast Asphalt Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "SCA" shall mean Suncoast Asphalt Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Suncoast Asphalt Pty Ltd.
 - 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by SCA to the Customer.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Equipment" shall mean all Equipment including any accessories supplied on hire by SCA to the Customer (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by SCA to the Customer.
 - 1.5 "Goods" shall mean all Goods supplied by SCA to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by SCA to the Customer.
 - 1.6 "Services" shall mean all Services supplied by SCA to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.7 "Price" shall mean the Price payable for the Goods as agreed between SCA and the Customer in accordance with clause 4 of this contract.
2. **The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
 - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
3. **Acceptance**
 - 3.1 Any instructions received by SCA from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by SCA shall constitute acceptance of the terms and conditions contained herein.
 - 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of SCA.
 - 3.4 The Customer shall give SCA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by SCA as a result of the Customer's failure to comply with this clause.
 - 3.5 Goods are supplied by SCA only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
4. **Price and Payment**
 - 4.1 At SCA's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by SCA to the Customer in respect of Goods supplied; or
 - (b) SCA's quoted Price (subject to clause 4.2) which shall be binding upon SCA provided that the Customer shall accept SCA's quotation in writing within thirty (30) days.
 - 4.2 SCA reserves the right to change the Price in the event of a variation to SCA's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to SCA in the cost of materials and labour) will be charged for on the basis of SCA's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
 - 4.3 SCA may submit detailed progress payment claims in accordance with SCA's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
 - 4.4 At SCA's sole discretion a non-refundable deposit may be required.
 - 4.5 At SCA's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Customers shall be made by instalments in accordance with SCA's payment schedule.
 - 4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and SCA.
 - 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Delivery of Goods**
 - 5.1 At SCA's sole discretion delivery of the Goods shall take place when:
 - (a) the Customer takes possession of the Goods at SCA's address; or
 - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by SCA or SCA's nominated carrier); or
 - (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
 - 5.2 At SCA's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Customer's account.
 - 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then SCA shall be entitled to charge a reasonable fee for redelivery.
 - 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 5.5 SCA may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased pursuant to this agreement.
 - (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
 - 5.7 The failure of SCA to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.8 SCA shall not be liable for any loss or damage whatsoever due to failure by SCA to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of SCA.
6. **Risk**
 - 6.1 If SCA retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SCA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SCA is sufficient evidence of SCA's rights to receive the insurance proceeds without the need for any person dealing with SCA to make further enquiries.
 - 6.3 Where the Customer expressly requests SCA to leave Goods outside SCA's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
 - 6.4 SCA shall not be held liable for any loss, damages, or costs, howsoever resulting from SCA laying asphalt on a base that has been prepared and/or approved by the Customer, or a third party.
7. **Access**
 - 7.1 The Customer shall ensure that SCA has clear and free access to the work site at all times to enable them to undertake the works. SCA shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of SCA.
8. **Underground Locations**
 - 8.1 Prior to SCA commencing any work the Customer must advise SCA of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer, storm, water, water mains, irrigation, telephone, cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
 - 8.2 Whilst SCA will take all care to avoid damage to any underground services the Customer agrees to indemnify SCA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.
9. **Title**
 - 9.1 SCA and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid SCA all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to SCA in respect of all contracts between SCA and the Customer.
 - 9.2 Receipt by SCA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then SCA's ownership or rights in respect of the Goods shall continue.
 - 9.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until SCA shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from SCA to the Customer SCA may give notice in writing to the Customer to return the Goods or any of them to SCA. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) SCA shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to SCA then SCA or SCA's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (e) the Customer is only a bailee of the Goods and until such time as SCA has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to SCA for the Goods, on trust for SCA; and
 - (f) the Customer shall not deal with the money of SCA in any way which may be adverse to SCA; and
 - (g) the Customer shall not change the Goods in any way nor grant otherwise give any interest in the Goods while they remain the property of SCA; and
 - (h) SCA can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that SCA will be the owner of the end products.
10. **Defects**
 - 10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify SCA of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford SCA an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which SCA has agreed in writing that the Customer is entitled to reject, SCA's liability is limited to either (at SCA's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
 - 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.
11. **Warranty**
 - 11.1 Subject to the conditions of warranty set out in clause 11.2 SCA warrants that if any defect in any workmanship of SCA becomes apparent and is reported to SCA within twelve (12) months of the date of delivery (time being of the essence) then SCA will either (at SCA's sole discretion) replace or remedy the workmanship.
 - 11.2 The conditions applicable to the warranty given by clause 11.1 are:
 - (a) the workmanship for the cause of defect of damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by SCA; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and SCA shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without SCA's consent.
 - (c) in respect of all claims SCA shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
 - 11.3 For Goods not manufactured by SCA, the warranty shall be the current warranty provided by the manufacturer of the Goods. SCA shall not be bound or be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
12. **Default and Consequences of Default**
 - 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SCA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by SCA.
 - 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify SCA from and against all costs and disbursements incurred by SCA in pursuing the debt including legal costs on a solicitor and own client basis and SCA's collection agency costs.
 - 12.4 Without prejudice to any other remedies SCA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) SCA may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. SCA shall not be liable to the Customer for any loss or damage the Customer suffers because SCA has exercised its rights under this clause. If any account remains overdue after thirty (30) days then an amount of the greater of fifty dollars (\$50.00) or ten percent (10%) of the amount overdue (up to a maximum of five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 12.6 Without prejudice to SCA's other remedies at law SCA shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SCA shall, whether or not due for payment, become immediately payable in the event that:
 - (a) the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
13. **Security and Charge**
 - 13.1 Despite anything to the contrary contained herein or any other rights which SCA may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to SCA or SCA's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that SCA (or SCA's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should SCA elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify SCA from and against all SCA's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint SCA or SCA's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
14. **Compliance with Laws**
 - 14.1 The Customer and SCA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
 - 14.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
 - 14.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
15. **Cancellation**
 - 15.1 SCA may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice SCA shall repay to the Customer any sums paid in respect of the Price. SCA shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by SCA (including, but not limited to, any loss of profits) up to the time of cancellation.
16. **Privacy Act 1988**
 - 16.1 The Customer and/or the Guarantor/s agree for SCA to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by SCA.
 - 16.2 The Customer and/or the Guarantor/s agree that SCA may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Customer, and/or
 - (b) to notify other credit providers of a default by the Customer, and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
 - 16.3 The Customer consents to SCA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 16.4 The Customer agrees that personal credit information provided may be used and shared by SCA for the following purposes and for other purposes as may be agreed between the Customer and SCA or required by law from time to time:
 - (a) provision of Goods; and/or
 - (b) marketing of Goods by SCA, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
 - 16.5 SCA may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer, and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
17. **Building and Construction Industry Payments Act 2004**
 - 17.1 At SCA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
 - 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
18. **Equipment Hire**
 - 18.1 The Equipment shall at all times remain the property of SCA and is returnable on demand by SCA. In the event that the Equipment is not returned to SCA in the condition in which it was delivered SCA retains the right to charge the Price of repair or replacement of the Equipment.
 - 18.2 The Customer shall,
 - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by SCA to the Customer.
 - 18.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, SCA's interest in the Equipment and agrees to indemnify SCA against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
19. **General**
 - 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
 - 19.3 SCA shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by SCA of these terms and conditions.
 - 19.4 In the event of any breach of this contract by SCA the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 19.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SCA nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 19.6 SCA may license or sub-contrast all or any part of its rights and obligations without the Customer's consent.
 - 19.7 The Customer agrees that SCA may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which SCA notifies the Customer of such change.
 - 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 19.9 The failure by SCA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SCA's right to subsequently enforce that provision.