

STANDARD CONDITIONS OF QUOTATION AND SALE

1. STANDARD CONDITIONS OF QUOTATION AND SALE

1.1 Unless otherwise expressly agreed in writing by the Company, these Conditions apply to any quotation given by the Company and to any agreement for the supply of goods to and/or the performance of work by the Company for the Customer.

1.2 It is expressly acknowledged and agreed that any order issued by the Customer consequent upon or with reference to the attached quotation will be deemed to be an offer to purchase on the terms stated in the attached quotation and these Conditions notwithstanding any other terms contained in the order or any clause in the order excluding these Conditions.

1.3 The Contract is the agreement between the Company and the Customer, in respect of the subject matter of the attached quotation and supercedes all other agreements, understandings, stipulations, terms, conditions or representations (whether oral or in writing).

1.4 Except as may be otherwise specified by the Company, the Contract will be governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of its court.

2. INTERPRETATION

2.1 In these Conditions, unless the context requires otherwise:  
 "Act of Insolvency" means the Company's acceptance of a bankruptcy order or a winding up order;  
 (a) the Customer is made bankrupt or a bankruptcy petition is presented against it;  
 (b) a meeting of creditors of the Customer is called with a view to entering a scheme of arrangement or composition with creditors or placing the Customer under official management or the Customer enters into such a scheme or is placed under official management; or  
 (c) an administrator, liquidator, provisional liquidator or a receiver is appointed in respect of the Customer or an application is made for winding up or a winding up order is made in respect of the Customer.

"Company" means Metecno Pty Limited trading as Bondor  
 "Completion Date" means the date agreed between the Company and the Customer, in the case where this Contract includes Works other than supply of goods, as the completion date, as the case may be, and as may be varied from time to time in accordance with the terms of this Contract;  
 "Conditions" means these Standard Conditions of Quotation and Sale;  
 "Contract" means the agreement constituted by the Company's quotation, and the Customer's acceptance of the Company's quotation;  
 "Contract Sum" means the total price specified in the Contract as may be adjusted from time to time in accordance with this Contract including, without limitation, the value of Variations performed by the Company;

"Customer" means the person or company from whom the Company accepts an order;  
 "Site" means the site to be made available to the Company by the Customer for the performance of the Works;  
 "Services" means the Works in addition to delivery of goods that may be required on the Site as set out in the Contract, including, but not limiting to, installation of goods;  
 "Valuer" means an independent valuer who is a qualified quality surveyor with not less than 5 years experience and is a member of The Master Builders Associations of NSW Pty Limited;

"Variation" means an increase, decrease, omission, substitution or other change to the scope of the Works including, with limitation, those arising from:  
 (a) particular conditions and sub-conditions, which prevail at the Site and which were not made known to the Company by the Customer at the date the Company gave its quotation or tender or the Customer made its order (whichever is earlier);  
 (b) the final dimensions or specifications relating to any part of the Works varying from those specified in the Company's quotation as a consequence of the Customer providing incomplete or incorrect specifications or information;  
 (c) any change in the design and sub-structure conditions, or any other structure to which the Works are to be fixed or any non-conformity of any such structure with any applicable Australian or other standards;  
 (d) any requirement that the Company provide penetrations, flashing or other goods or services; and  
 (e) any enactment, repeat or amendment of applicable laws and regulations;  
 "Works" means the Works to be executed by the Company in accordance with the Contract including, but not limited to the supply of goods, materials or Services including any Variations.

3. QUOTATION

3.1 Subject to clause 3.2, a quotation by the Company remains open for 30 days from the date stated on the quotation and will lapse if the Customer fails to make an order in writing within that period.  
 3.2 The Company may withdraw a quotation, prior to the expiration of 30 days or may terminate the Contract without notice if a Customer does not in the Company's opinion obtain a satisfactory credit assessment.  
 3.3 The Customer's order in writing, until the Company accepts, in writing, an order from the Customer the parties are not legally bound.

4. VARIATIONS

4.1 Subject to the other provisions of this Contract, the Customer may instruct or the Company may have to perform Variations.  
 4.2 The Company is not bound to perform a Variation unless:  
 (a) the Customer gives a written instruction from an employee or agent of the Customer to perform the Variation for the Customer; and  
 (b) in the reasonable opinion of the Company, the Variation is of a character and extent contemplated by the Contract.  
 4.3 Where the Company receives a written instruction from the Customer which does not identify that the instruction is to perform a Variation, but the company believes the work to be performed pursuant to the instruction involves a Variation, the Company may require the Customer to re-issue the instruction in a form complying with clause 4.2(a), if the Customer fails to re-issue the instruction then the Company does not have to comply with the instruction.  
 4.4 The price payable for a Variation performed by the Company is to be determined by the Company and the Customer within 7 days of the written instruction under clause 4.2(a) is received by the Company and the agreed price for the variation will be added to or deducted from the Contract Sum and claimed in the month in which it is performed.

5. PAYMENT

5.1 The Customer will pay to the Company the Contract Sum in accordance with clause 5.2.  
 5.2 Any tax, including without limitation, duty, levy or other government or statutory charge which is imposed on any part of or all of the Works and which relates to the importation, production, sale, consumption, delivery or performance of such Works excluding tax of the Company's income and capital gains will to the extent it is not included in the Contract Sum, be added to the Contract Sum.  
 5.3 "GST" means goods and services tax and any similar tax, whenever introduced, and whether imposed or payable at the election of any taxpayer or other person. All payments to be made by the Customer under this Agreement are calculated exclusive of GST. If a GST is or has been introduced, the Company may vary the price or any other obligation under this Agreement to recover all GST payable in respect of the supply of anything under or pursuant to this Agreement.  
 5.4 If credit facilities have been established between the Company and the Customer, the following terms of payment of the Contract Sum will apply:  
 (a) in any case in which the Company requires progress payments, such payments will be due and payable within 14 days of the date of each invoice;  
 (b) in the case of Services on site payments will be due and payable within 7 days of the completion of these Services;  
 (c) in any other case, payments will be due and payable in accordance with the terms stated in the credit application.  
 5.5 Notwithstanding clause 5.4, the Company may require from the Customer payment in full or payment by the Customer of a non-refundable deposit or other form of security satisfactory to the Company in the case of non-standard goods or goods of non-standard sizes or the performance of Services on Site.  
 5.6 All payments will be made in full and no amount may be withheld by the Customer by way of security, set-off, deduction or counter-claim, with exception of any right to deduct retention if it is expressly specified in the Contract.

6. COMPLETION

6.1 If the Works involve the performance of Services, the Works are deemed to be complete when the Works are, in the reasonable opinion of the Company, fit for occupation or for use for the purpose for which they were intended as reasonably determined by the Company.  
 6.2 The Company will complete the Works by the Completion Date, if the Works are delayed by circumstances or events beyond the control of the Company including, but not limited to, delays by the Company's suppliers or subcontractors, delays directly or indirectly caused by the Customer, delay in giving the Company access to the Site in a condition that complies with clause 8.1 of these Conditions.  
 6.3 In the event of a breach of clause 6.2, the Company shall be responsible for the completion of any other concurrent cause of delay for which the Company may be responsible:  
 (a) the Completion Date will automatically be extended by the period advised by the Company to the Customer in writing that the Works have been delayed;  
 (b) the Company may with the Customer's approval, alter the specifications for the Works so as to allow the substitution of equivalent works; or  
 (c) the Company may terminate the Contract without any liability for breach of the Contract

or for any antecedent breach and the Company will be entitled to full payment for all Works, including the supply of goods, which have been performed to the date of such termination and the Customer will indemnify the Company for all losses including consequential loss of profit suffered by the Company as a consequence of such termination.  
 6.3 In the event the Works are delayed for the reasons described in clause 6.2 and including consequential loss of profit suffered by the Company as a result of liquidated damages to the Customer for that period for which the Works are so delayed.  
 6.4 The Customer will pay the Company for all costs including, but not limited to, overheads which are reasonably incurred by the Company as a result of a delay which entitles the Company to an extension of time under clause 6.2.

7. DELIVERY AND PACKAGING

7.1 Unless stated otherwise in the Company's quotation, in respect of Works which only comprise of the supply of goods:  
 (a) those goods will be supplied to the Company's premises and delivery to a carrier nominated by the Customer will constitute delivery to the Customer. The Customer will be responsible for arranging transport and the payment of insurance for the delivery of the goods;  
 (b) the Customer is the Customer's responsibility, any claim by the Customer for the loss or damage to the goods will be made to the railway authority, shipping authority or carrier concerned;  
 (c) ownership of pallets used for delivery remains with the Company at all times and the Customer will agree to pay the Company for any pallets not returned in good order and condition within 14 days of delivery of goods;  
 (d) if delivery of any consignment is delayed at the request of the Customer for more than 14 days, then any pallets shall become due as if the consignment had been despatched on the due date. Any goods stored as a result of the Customer's inability to take delivery will be held entirely at the risk of the Customer, and the Company may store and deliver the goods at the Customer's expense and risk;  
 (e) if the Company does not receive within 10 days after the date of delivery of the goods, a written claim from the Customer disputing the quantity or the type of the goods delivered, the Customer will be deemed to have accepted the delivery to be in accordance with the Contract; and  
 (f) if delivery is to be made at some point beyond the Company's dispatch point, it will be sufficient delivery for the purpose of the Contract for the goods to be delivered by the Company to the place agreed with the Company whether or not the Customer is in attendance to receive it.

8. WORK ON SITE

8.1 If the Contract requires the performance of Works which include Services, the Customer, at no cost to the Company:  
 (a) and the Customer acknowledges and agrees that it is responsible for the accuracy of all information regarding the Site contained in the Contract;  
 (b) must insure the Site is clear, free of level, water, clean and at ground level;  
 (c) will provide the Company with uninterrupted direct access for the employees, sub-contractors, materials, plant and equipment necessary for the performance of the Works;  
 (d) must insure that adequate structural steel work is provided to support and allow connections to any structure;  
 (e) warrants that the Site and any structural steel work erected thereon will satisfactorily support the Works;  
 (f) will provide suitable area for vehicle off-loading on the site;  
 (g) will provide adequate storage on the Site for all of the Company's equipment and materials;  
 (h) will provide adequate facilities and assistance (as are reasonably required by the Company) on the Site to enable the Company to perform the Works efficiently and safely;  
 (i) must insure that detailed plans and drawings of the Site and any other information including, without limitation, information about ground conditions and subsurface conditions which the Company may reasonably require are provided to the Company to enable it to perform the Works safely and efficiently;  
 (j) prior to performance of the Works, will obtain all necessary building, health and safety approvals, permits, licences, consents and approvals for the performance of the Works;  
 (k) must ensure that any concrete floor has a smooth trowelled finish and is level to within +/-30mm over any two points on the floor separated by a distance of 300cm and to within +/-2mm between any two points on the floor.

9. DEFAULT BY CUSTOMER

9.1 If the Customer defaults the due observance and performance of any provision of the Contract or if it commits an ACT of Insolvency then the Company may, at its option and without prejudice to any other rights it may have under the Contract or at law:  
 (a) enter without prior notice or consent the Customer's premises to reclaim any and all goods that are the property of the Company and exercise its rights according to clause 12 of these Conditions;  
 (b) suspend or cancel the performance of any part of or all of the Works then outstanding under any other order;  
 (c) require payments in cash or the provision of additional security to the satisfaction of the Company, prior to dispatch of any goods or performance of any part of the Works then outstanding under the Contract or outstanding under any other order;  
 (d) retain any security or deposit given or moneys paid by the Customer and apply such security, deposit or moneys against any losses and damages incurred by the Company as a result of the Customer's ACT of Insolvency;  
 (e) give notice in writing to the Customer and after 14 days from such notice terminate the Contract; and  
 (f) set-off amounts owed to the Company by the Customer under the Contract or as a result of any losses or damages any other account against any moneys owing to the Customer.  
 9.2 In the event of any action being taken by the Company to recover any overdue moneys or legal expenses (on a solicitor's bill), collection agency or any and all other associated costs incurred by the Company are payable by the Customer and shall be recoverable as a separate debt.

10. LIABILITY OF THE COMPANY

10.1 Other than as otherwise expressly provided in the Contract, the Company will not be liable to the Customer for any loss including, but not limited to consequential loss and loss of profits, injury or damage which may accrue against or be suffered by the Customer or any other person arising out of or in any way connected with:  
 (a) the performance of this Contract and the Works by the Company; and  
 (b) the quality, any defect in, or failure of, or unsuitability for any purpose of the Works.  
 10.2 Except as provided in clauses 10.1, 10.2 and 11, the Company disclaims and excludes all conditions and warranties, expressed or implied by statute, common law, equity, trade custom or usage (and any rights and remedies which may be conferred thereunder).  
 10.3 The liability of the Company for a contravention of a condition or warranty implied by the Trade Practices Act 1974 ("the Act") to the extent it may be modified but not excluded will be limited, at the option of the Company, to:  
 (a) in the case of goods, the replacement, repair or payment for the costs of replacement or repair of such goods; and  
 (b) in the case of services, the supplying of the services again or payment of the cost of having the services supplied again.  
 10.4 Unless liquidated damages are expressly agreed in writing between the Company and Customer, the Company is not liable for any loss or damage whatsoever, including consequential loss and liquidated damages, which may accrue against or be suffered by the Customer arising from, or in connection with, the Company failing to complete the Works in or by the Completion Date. If liquidated damages have been agreed then the Company's liability for any loss suffered by the Customer arising from any delay to the Works is limited to the amount of liquidated damages agreed for each day from the Completion Date until the Works are completed by the Company in accordance with clause 6.1, but not exceeding the total amount of liquidated damages agreed to be paid by the Company in the Contract and, if no such amount has been agreed, the total liquidated damages payable by the Company will not exceed 1% of the Contract Sum.

11. WARRANTY

11.1 The Company warrants to the Customer that any Works performed by the Company will be free from defects due to faulty materials used or workmanship by the Company.  
 11.2 If a breach of warranty clause 11.1 is proven to the reasonable satisfaction of the Company, then the Company will rectify the defect by (at the option of the Company):  
 (a) in the case of goods, by the replacement, repair or payment for the cost of replacement or repair of such goods; or  
 (b) in the case of service, by supplying the services again or payment of the cost of having the services supplied again.  
 11.3 If any defect goods are to be repaired or replaced under the terms of this Contract, then the Customer will bear the cost of return of the goods to the place of original delivery or, if the Works include installation of the goods, at the place of installation, plus any additional cost of repairing or replacing the goods at any other place will be borne by the Customer.  
 11.4 The Customer will bear the costs of all expenses incurred by it in making a claim under this clause 11.  
 11.5 This warranty does not apply in respect of defects:

(a) due to arising from incorrect or negligent handling, usage, maintenance or storage disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lighting, electrical, or other faults or defects, or full erection, or full completion (as defined by the Company), acts of God or causes beyond the Company's control;  
 (b) due to arising from unauthorised repairs or alterations to the Works;  
 (c) due to arising from the Customer's negligence or failure to observe the Contract as formed or, if the Customer examines the Works before the Contract is formed, except as regards defects which that examination ought to reveal; and  
 (d) in goods supplied by the Company together with or as part of the Works which were not manufactured by the Company or to defective Services which were not performed by the Company.  
 11.6 The provisions of clause 11.1 do not apply unless:  
 (a) the claim is made on the Company within 12 months after the date of completion of the Works or delivery of the goods and the Company is notified in writing within 14 days of the alleged defect first coming to the notice of the Customer; and  
 (b) the Customer has fulfilled all its obligations under the Contract;  
 11.7 The benefit of this warranty is personal to the Customer and may not be assigned without the prior written consent of the Company.

12. INSURANCE, RISK AND PROPERTY

12.1 The Works are not to be insured by the Company unless otherwise agreed in writing by the Company.  
 12.2 The Customer will be the joint names of the Customer, the Company and all sub-contractors of the Company for their respective rights, interests and liabilities effect insurance under a Contractor's Risk Insurance Policy which at all times covers the whole of the Works including any associated temporary works and the materials and equipment used in the Works, in respect of loss, destruction or damage of or to the property insured for the full reinstatement and replacement cost plus an appropriate amount to provide for the cost of the design, construction and removal of and in place plus also an appropriate percentage to cover the fees of architects, engineers, quality surveyors and consultants and other fees properly incurred.  
 12.3 The Customer will be the joint names of the Customer, the Company and all sub-contractors of the Company for their respective rights, interests and liabilities to the public for an amount not less than \$10,000,000 in respect of personal injury to or death arising by accident of any person whomsoever (not being a contractor or subcontractor of the Company) who is injured or killed in or on any Territory in which the Works are situated) and in respect of any under any Statute relating to Workers' Compensation Insurance of the State or injury, loss or damage whatsoever arising by accident to any property real or personal including property of the Customer or the Company, in which the Customer is interested and where the accident arises out of or is caused by the execution of the Works.  
 12.4 The Company's loss or deterioration of any part of or all of the Works will pass to the Customer on the delivery of any goods comprised in the Works or on the expiry of 5 days from the date of notification by the Company to the Customer that such goods are ready for delivery (whichever is the earlier).  
 12.5 Notwithstanding that risk in part of the Works may pass to the Customer, property in and to any part of the Works and the goods comprised in the Works will not pass to the Customer until all of the Contract Sum and all other moneys payable by the Customer to the Company has been paid in full and until then:  
 (a) the Customer will hold goods supplied under these Conditions as bailee of the Company and a fiduciary relationship will exist between them;  
 (b) the Customer will sell the goods under these Conditions in the ordinary course of its business as agent of the Company and in any case the Customer will account to the Company for the proceeds of such sales;  
 (c) the Customer will indemnify the Company in respect of all claims under these Conditions and the Customer grants the Company a licence to enter the Customer's premises without notice and without consent during normal business hours to inspect the goods and the Works to which the Customer acknowledges that are the property of the Company and if necessary dismantle the Works and any existing structure; and  
 (d) the goods must be stored separately and in a manner enabling them to be identified and cross-referenced to particular invoices and the Customer acknowledges that if it should mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Company will be owners in common of the new product.

13. FORM OF SECURITY

13.1 The Company provides for retention:  
 (a) The Company may, at its option, issue a bank guarantee in respect of the retention amount, otherwise the retention amount will be held in an interest bearing account in the name of the Company and paid to the Company at the time set out in the Contract;  
 (b) The Customer will only be entitled to payment of the sums held on retention in respect of any losses it has incurred through rectification of defects in the Works, and the Customer will be responsible to the Company to rectify any such losses and has and has failed after a reasonable period to rectify defects in the Works which have been identified by the Customer in writing;  
 (c) For the purpose of determining the amount of retention to be withheld by the Customer, the value of any Variations will not be taken into account.

14. DISPUTES

14.1 If a dispute arises out of or relates to the Contract, a party may not commence any arbitration proceedings until the dispute has been referred to the arbitrator in accordance with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.  
 14.2 A party claiming that a dispute ("the Dispute") has arisen under or in relation to this Contract must give written notice to the other party to this Contract. Specifying the nature of the Dispute.  
 14.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute by the use of dispute resolution techniques and procedures to be adopted, the timetable for all steps in those procedures and the selection and compensation of the independent person required for such techniques, the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee (or his equivalent in the work state) will select the mediator and determine the mediator's remuneration.  
 14.5 If the procedures set out above do not result in settlement, all outstanding matters in dispute shall be determined by arbitration by a single arbitrator in accordance with the Commercial Arbitration Act 1984 (NSW) or the equivalent in the work state). If the parties cannot agree on the arbitrator to be appointed, the arbitrator shall be appointed by the president or acting president of the Institute of Arbitrators of Australia.

15. SUB-CONTRACTING

15.1 The Company may sub-contract its obligations under the Contract. The Customer acknowledges that no sub-contractor has authority to agree to any Variation of the Works on behalf of the Company.  
 16. CONFIDENTIAL INFORMATION, SPECIFICATIONS AND DRAWINGS  
 16.1 Drawings, specifications, formulations, production processes, pricing, quality systems, testing methods, designs, samples, and other information disclosed by the Company and marked or otherwise treated as confidential will be treated confidentially by the Customer and will not be disclosed by the Customer without written consent of the Company or used by the Customer for any purpose other than directly related to the performance of the Works.  
 16.2 The Company retains copyright and other intellectual property rights in all material it uses for the performance of the Works.  
 16.3 The Customer warrants it has a right to use any drawings or other material it has provided to the Company for the performance of the Works.

16. GENERAL

16.1 Unless expressly included in the Contract, all descriptive specifications, drawings, dimensions and data appearing in catalogues and other literature supplied by the Company are approximate only and do not form part of the Contract.  
 16.2 The Company does not warrant goods and goods of non-standard sizes, the Customer will provide all the information necessary for the manufacture of the goods and their performance of any services. Unless specifically notified in writing the Company will be taken to have no knowledge of the intended use of such goods.  
 16.3 The Customer warrants the accuracy, completeness and reliability of any documents or other information provided by the Customer to the Company relating to the Works.  
 16.4 The Customer will comply with the manufacturer's manuals and instructions in relation to those products supplied in conjunction with the Works which are not manufactured by the Company.  
 16.5 Any tests or inspections by the Customer must be made at point of dispatch unless otherwise specifically stipulated herein. Any cost associated with specific tests, requested by the Customer, shall be borne by the Customer, unless agreed upon in writing.  
 16.6 The right is reserved to the Company, subject to good manufacturing practices, to determine materials or technique required by the Customer's order if the Customer does not specify materials or technique.  
 16.7 The relevant BONDOR Specification forms an integral part of the Seller's offer and acceptance of the attached Quotation shall be deemed acceptance of the methods and construction of materials outlined therein.  
 16.8 Any provision or clause in these Conditions which is void or unenforceable may be severed without affecting other provisions or clauses within these Conditions.