

BRI Quote Terms and Conditions

Bituminous Roadways, Inc., a Minnesota corporation, and any of its operating subsidiaries, are collectively referred to herein as "BRI". Any quote or proposal by BRI is subject to these terms and conditions ("Terms and Conditions").

1. **Sole Agreement.** Except as otherwise specifically agreed in writing by BRI, these Terms and Conditions, and any other documents provided by BRI pertaining to the quote or proposal from BRI, contain the sole and exclusive terms and conditions that apply to the sale by BRI to the buyer ("Customer") of the goods and/or services referenced in BRI's quotation, proposal, order acknowledgement or Customer's purchase order. These Terms and Conditions supersede all prior oral or written representations, negotiations, understandings, agreements and promises with respect thereto. The sale of goods and/or services by BRI is expressly conditioned on assent by Customer to these Terms and Conditions and any additional or different terms or provisions in documents provided by Customer relating to such sale shall not apply to such sale, are hereby objected to by BRI and shall be of no force or effect. Customer's placement of a purchase order or acceptance of goods and/or services shall constitute Customer's acceptance of these Terms and Conditions. All orders are non-cancellable.
2. **Pricing/Payment/Collection Costs.** Pricing presented on any quotation is valid for 10 days from the date of the quote. The attached quote is only valid for the specified products and services and for the specified project. Customer agrees to pay the retail list price if the quote is used to support work on another project. Terms of payment for any products are as set forth in the quotation. If payment is received later than the due date set forth in the quote, BRI may impose a service charge of 1.5 % per month (18% annual rate), from the due date until the date payment is received. BRI reserves the right to modify payment terms or require different payment terms in its sole discretion. If BRI commences collection efforts due to Customer failing to make timely payment, Customer shall be responsible for all costs incurred by BRI in its collection efforts, including but not limited to, attorney's fees and court costs.
3. **Product Availability and Delivery.** Unless otherwise stated, all product is delivered FOB BRI's pit/plant or other agreed upon location and is subject to product availability at the time of requested delivery. In no event shall BRI be liable for damages of any nature to the Customer due to the lack of product availability. BRI seeks to minimize wait times; however, BRI is not liable for delays in loading and/or delays caused by plant breakdowns or any other reason. Title to products or goods and risk of loss or damage shall pass to Customer on delivery.
4. **Excused performance:**
 - a. **Force Majeure.** BRI's performance hereunder shall be excused without liability by reason of strikes, lockouts, labor disputes, material shortages, governmental regulations, governmental action, permitting constraints or limitations, mechanical failure, judicial order, public emergency, weather, fire, other Acts of God, inability to procure materials, failure of power, riots, war, terrorist act, and any other causes in or outside of BRI's reasonable control ("Force Majeure"). In no event shall BRI be liable for damages to the Customer due to delay caused by a Force Majeure event.
 - b. **Impracticability.** BRI's performance hereunder shall be excused without liability if BRI shuts down, temporarily or permanently, a plant or pit location, or if BRI reasonably believes it is unable or it is impracticable, at BRI's sole discretion, to make the products in the quantities or specification required.
 - c. **Alternate Supply.** Under no circumstances shall BRI be obligated to purchase or otherwise obtain products or goods from any other person or entity.
 - d. **Inability of the Customer to Maintain Credit.** BRI's performance hereunder shall be excused without liability if the Customer is unable to maintain an open line of credit with BRI. BRI, in its sole and exclusive judgement, may vary the amount of credit extended to the customer and/or rescind credit previously provided and Customer waives notice of any changes to the Customer's credit limit.
5. **Carryover.** Prices valid for current operating season only unless otherwise stated. Carryover of prior year pricing subject to BRI's written acceptance.
6. **Warranty.** BRI's sole and exclusive warranty with regard to products or services provided is that products will conform to BRI's specifications on delivery. Customer agrees that BRI's quality management laboratory's results shall be determinative of achieving any specification results; results from third part laboratories are expressly disclaimed as determinative in all cases. In no case will BRI be liable for failures due to Customer's care of the product, site conditions or improper installation or use.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED BY CUSTOMER IN LIEU OF ANY AND ALL OTHER WARRANTIES, AND BRI HEREBY DISCLAIMS ALL OTHER WARRANTIES OR GUARANTEES WITH RESPECT TO THE PRODUCTS OR SERVICES, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY

WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS OR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

If any product warranted hereunder proves defective or non-conforming at delivery, BRI's sole liability and the Customer's sole remedy hereunder shall be for BRI to either, at BRI's sole discretion, replace any such defective or non-conforming product with a non-defective or conforming product, or credit Customer's account for all amounts paid with respect to the defective or non-conforming product. In no case shall BRI be responsible for any direct or indirect costs, including but not limited to installation or reconstruction costs, lost profit, delays or penalties incurred by Customer.

Any claims by Customer for defective or non-conforming product must be made within 5 business days of delivery unless due to the nature of the product a claim must be made in a shorter period of time in order to preserve evidence of the product's defect or non-conformance.

7. **Limitation of Liability. NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, BRI SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR, AND CUSTOMER HEREBY RELEASES BRI FROM LIABILITY ATTRIBUTABLE TO, ANY SPECIAL, INDIRECT, LOST PROFIT, CONSEQUENTIAL, OR OTHER INCIDENTAL DAMAGES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, OR DEFAULT IN THE PERFORMANCE HEREOF, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY), OR WARRANTY. IN NO EVENT SHALL BRI'S LIABILITY TO CUSTOMER OR ANY THIRD PARTY EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR THE PRODUCT PURCHASED UNDER THIS QUOTE. THIS LIMITATION OF LIABILITY EXPRESSLY INCLUDES ANY LIABILITY ARISING FROM BRI'S OWN NEGLIGENCE.**
8. **No Assignment.** Customer may not assign this or any quote without the prior express written consent of BRI.
9. **Bankruptcy.** If the Customer becomes insolvent or unable to pay debts as they mature, or makes an assignment for the benefit of creditors, or any proceedings are initiated by any party involved herein alleging that it is insolvent or unable to pay its debts as they mature or a petition is filed under any of the provisions of the United States Bankruptcy Code; also, if any proceedings any guarantor alleging that it is insolvent or unable to pay its debts as they mature or a petition is filed against it under any of the provisions of the United States Bankruptcy Code, and if said proceedings or petition are not discharged, dismissed, or otherwise terminated within sixty (60) days from commencement this quote shall be deemed cancelled by the Customer and BRI's performance shall be excused without liability.
10. **Credit.** The pricing and terms of this quote are conditioned on the Customer's ability to maintain an open credit line with sufficient credit availability. If the Customer's line of credit with BRI is reduced, eliminated or the credit availability is insufficient, this quote shall be deemed cancelled by the Customer and BRI's performance shall be excused without liability.
11. **Governing Law.** These terms and conditions shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its conflicts of law provisions. Any controversy or claim arising out of or relating to any provisions of these Terms and Conditions will be finally and exclusively settled in the state or federal courts located in Hennepin County, Minnesota. The parties hereby consent to jurisdiction and venue in such courts.