



The Deed is made on

between

Name of Principal

State of Queensland (acting through the Department of Transport and Main Roads)

of

Address of Principal

PO Box 673, Fortitude Valley Qld 4006

'the Principal'

and

Company Name of Warrantor

ACN

of

Address of Warrantor

'the Warrantor' (which expression shall include its successors and assigns)

Recitals

- A) The Principal requires Asphalt Works to be performed from time to time as part of its transport infrastructure program.
- B) To ensure Contractors carrying out Asphalt Works have the requisite skill and experience, and that Asphalt Works are performed to the highest standard, the Principal has adopted a system for prequalification of Contractors seeking to perform Asphalt Works for projects.
- C) As a condition of the Principal granting prequalification, the Warrantor has agreed to enter into this deed.



NOW THIS DEED WITNESSES that –

1. The Warrantor warrants to the Principal that the Asphalt Works shall be in accordance with the quality or standard stipulated by the Specifications. The Warrantor's liability under this clause shall be proportionally reduced to the extent that an act or omission of the Principal Group contributed to the lower standard or quality of the Asphalt Works.
2. The Warrantor shall (unless otherwise agreed in writing between the parties) replace or make good (to the reasonable satisfaction of the Principal) at the expense of the Warrantor so much of the Asphalt Works carried out by the Warrantor that shall be found to be Defective, but only to the extent that the Defect is caused by the Warrantor.
3. If the Principal notifies the Warrantor that it considers there to be a Defect for which the Warrantor is liable, the Warrantor shall, within the timeframe stipulated by the Principal, comply with the Principal's instructions to carry out remedial works to correct the said Defect, whether or not any dispute or difference exists between the parties, including any dispute as to the existence of, or liability for, the said Defect. The Warrantor shall be entitled to recover from the Principal the additional costs reasonably incurred by the Warrantor to carry out such remedial works if it is subsequently determined that the Warrantor had not breached clause 1 of this warranty.
4. If the Warrantor is unable or unwilling to commence, proceed with and diligently complete the remedial works to the satisfaction of the Principal, the Principal may by itself, or by engaging third parties, carry out the remedial works. If such remedial works are works which the Warrantor was liable to do at its own cost and expense under this warranty or at law, all costs and expense properly incurred by the Principal in connection therewith shall be recoverable as a debt from the Warrantor by the Principal, or may be deducted by the Principal from any monies due or which may become due to the Warrantor under any contract with the Principal.
5. Subject to paragraph 6 of this deed, the Warrantor agrees to indemnify and hold harmless the Principal:
 - (i) against any losses arising out of any breach of the warranties, covenants or other conditions hereby given by the Warrantor however arising;
 - (ii) against any:
 - (a) loss of or damage to property of the Principal; or
 - (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Warrantor (directly or indirectly) of the Asphalt Works.
6. The Warrantor's liability to indemnify the Principal under this deed shall be reduced proportionally to the extent that the act or omission of the Principal Group contributed to the loss, damage, death or injury.
7. For the purposes of this deed, the Warrantor is liable to the Principal for the acts and omissions of its Subcontractors and employees and agents of its Subcontractors as if they were acts or omissions of the Warrantor.



8. Except for any liability of the Warrantor under clause 5(ii) of this deed, the Warrantor shall not be liable to the Principal for any consequential loss which might be suffered by the Principal in connection with this deed.

9. This warranty shall be in addition to and shall not derogate from any warranty in any contract between the Warrantor and the Principal in respect of the Asphalt Works.

10. Dispute Resolution

(a) If a dispute or difference arises between the parties in relation to the liability of either party under this deed, including a dispute as to whether Asphalt Works are Defective (“**Dispute**”), a party must send to the other party a notice (headed “Notice of Dispute”), adequately identifying and providing details of the Dispute (“**Notice of Dispute**”).

(b) Within 5 business days after the service of a Notice of Dispute, a representative from each of the Principal and Warrantor shall confer at least once to attempt to resolve the Dispute.

(c) If the representatives referred to in clause 10(b) of this deed fail to resolve the Dispute within 10 business days after the service of a Notice of Dispute, the General Manager (or equivalent) of the Warrantor and the Director (Pavements, Research and Innovation - or equivalent) of the Principal shall confer at least once to attempt to resolve the Dispute.

(d) If the Notice of Dispute is not withdrawn, or the Dispute is not resolved, within 10 business days of the first meeting referred to in clause 10(c) of this deed, or such longer time as agreed between the parties, then:

(i) subject to clause 10(d)(ii) of this deed, a party may refer the Dispute to litigation;

(ii) if the Dispute, or part of the Dispute, relates to whether Asphalt Works are Defective (including the cause of any such Defect, but only in a technical and not legal sense) (the “**Technical Issues**”), the Dispute must first be referred to an independent expert and dealt with as follows:

A. in the absence of agreement by the parties as to the independent expert, the independent expert will be appointed on the application of any party by the President of the Institute of Arbitrators & Mediators Australia (Qld), taking into account the subject matter of the Technical Issues;

B. the independent expert:

1. must make a determination or finding as soon as practicable and in any event within 20 business days of the Dispute being referred to the independent expert, or such longer period as may be agreed between the parties;

2. shall determine the Technical Issues only and shall do so as an expert (and not as an arbitrator) in accordance with the Rules;

3. may, but is under no obligation to, engage third parties to provide technical assistance to the expert;

4. shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Technical Issues;



- (iii) the independent expert's decision in respect of the Technical Issues will be final and binding on the parties, but only if the direct financial implications of the determination does not exceed \$1 million; and
 - (iv) the costs of the independent expert will be borne by the parties equally or as the independent expert may otherwise determine and each party will bear its own costs relating to the independent expert's decision.
- (e) The provisions of clause 10 of this deed do not preclude a party from seeking an injunction to prevent or restrain a breach of this deed.
- (f) This clause 10 shall survive termination of this deed.
11. This deed shall be governed and construed in accordance with the laws of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.
12. In this deed:
- a. reference importing the singular only shall also include the plural:
 - b. except where expressly stated to the contrary:

Asphalt Works means any works necessary for the manufacture or construction of asphalt, including without limitation the supply, laying or compacting of asphalt.

Contractors means Head Contractors and Subcontractors.

Defect means any failure of the Asphalt Works to comply with the Specifications; and
Defective shall be construed accordingly.

Head Contract means any contract between the Principal and Head Contractor.

Head Contractor means any party directly engaged by the Principal to carry out Asphalt Works, whether by itself or together with other infrastructure works.

Principal Group means the Principal and its employees, agents, consultants and contractors, but does not include the Warrantor.

Project means a project in connection with the Principal's transport infrastructure program.

Register means the Department of Transport and Main Roads' "Register of Asphalt Works not Warranted" referred to in the Department of Transport and Main Roads Technical Note entitled "Asphalt Warranty and for Register of Asphalt Works not Warranted".

Rules means the Institute of Arbitrators Australia's "Expert Determination Rules", as may be replaced or amended from time to time.

Specifications means the registered asphalt mix requirements and the performance and surface shape requirements for Asphalt Works as set out in the Department of Transport and Main Roads' "Technical Specification, MRTS30 Asphalt Pavements", as may be amended from time to time .

Subcontractor means any party to whom any part of the Asphalt Works have been subcontracted but does not include suppliers (ex bin) of asphalt unless that supplier carries out additional Asphalt Works in respect of the same Project.

Deed of Warranty



Executed as a **deed** on the date first appearing above

Signed, sealed and delivered as a deed for and on behalf of the State of Queensland (represented by the Department of Transport and Main Roads) by its duly authorised officer on theday of20....in the presence of:

Signature of witness

Full name of witness

Signature of officer

Full name of officer

Signed, sealed and delivered for and on behalf of
.....
.....
by its attorney/s under Power of Attorney dated
..... day of20.....

.....
.....
who / each of whom certifies that
.....
.....
it has / they have not received any notice of the
revocation of the Power of Attorney, in the presence
of:

Signature of witness

Full name of witness

Signature of attorney

Deed of Warranty



Signed, sealed and delivered as a deed by
.....
.....
in accordance with the *Corporations Act 2001 (Cth)*
on theday of20....by:

Signature of director

Date / /

Full name of director (printed)

Signature of director/secretary

Date / /

Full name of director/secretary

Signed, sealed and delivered as a deed by
.....
.....
in accordance with the *Corporations Act 2001 (Cth)*
on theday of20....by:

Signature of sole director

Date / /

Full name of sole director

Signed, sealed and delivered as a deed by
.....
.....
on theday of20....in the presence
of:

Signature of witness

Signature

Full name of witness