



## Standard Terms and Conditions

Version: 2024.01 Revision Date: 3.14.204

**STANDARD TERMS:** This contract shall be subject to the following general conditions and standard terms of the contract printed below. True North Asphalt, will be referred to as "the contractor" or "TNA." The owner, architect, client or customer to whom this proposal/contract is addressed and authorized by will be referred to as "Customer" or "you." Sale of any goods or related services (collectively, "Services") referenced in the Quote, Bid, Proposal or Agreement (collectively, "Quote") written to the Customer is expressly conditioned upon the terms and conditions set forth below.

**ACCEPTANCE:** By signing the Quote, you agree that you have read all pages and agreed to these terms and conditions. Other than as specifically provided in a separate written agreement between TNA and Customer, any additional or different terms specified or referenced in Customer's Purchase Order are hereby excluded and shall not be deemed effective or binding unless expressly agreed to in writing by an authorized representative of TNA. These terms and conditions represent the entire agreement between TNA and the Customer pertaining to the subject matter of this Quote and shall supersede all prior oral and written agreements, proposals, communications, and documents. Any amendment, change order, revision, or termination to an already-accepted Quote shall be subject to acceptance by an authorized representative of TNA. The general conditions and prices and specifications associated with this contract are hereby accepted. True North Asphalt is authorized to perform this work.

**ELECTRONIC SIGNATURES:** this Quote may be executed by original, facsimile, and electronic signatures, each of which when affixed shall be deemed to be an original that is enforceable by law.

**PRICES:** The price set for in the Quote are in United States Dollars.

**ESTIMATED OR APPROXIMATE QUANTITIES:** Quantities and areas in this Quote are approximate, arrived at for estimating purposes only. In addition, it is understood that payment is to be made on actual quantities of work completed and actual areas covered unless otherwise indicated.

**PAYMENTS:** Unless otherwise noted, Payment is due in full upon completion or upon invoicing of completed work. Payment shall be deemed to have been made when a check is received by TNA or payment is received by an electronic transfer in TNA's bank account. Customer shall not withhold payment to TNA, all payments hereunder shall be paid without any deductions, set-off, or counter-claims including for any Taxes. In the event of any dispute arising out of this contract. In the event of a dispute, Customer will deposit any unpaid balance due on this contract with a mutually agreed upon bank, which will act as an Escrow Agent until the dispute is resolved.

**FINANCE CHARGES:** TNA reserves the right to assess interest on any late payments from the date due until receipt of payment in full. A finance charge of 1.5% per month compounded monthly, or the maximum rate permitted by law, will be added to all past due accounts. TNA reserves the right to assess additional charges for any collection or litigation expenses, including reasonable attorney's fees incurred by TNA in the collection of late payment. In addition to any remedies under law, TNA may at its sole discretion suspend future services until all delinquent payments due are received. TNA may require an advance payment, deposits or milestone payment prior to beginning performance of the Quote.

**EXTRA WORK:** Any additional work requested beyond the specifications of the Quote will be outlined in writing on a separate proposal form. Extra work performed on a time & material basis shall be signed for at the time the work is performed. The lack of a representative of the Customer does not relieve the Customer from payment obligation for the work billed.

### ADDITIONAL CHARGES IF APPLICABLE:

TNA reserves the right to assess additional charges if the below conditions are applicable;

- If Existing asphalt is thicker than stated in quote, \$150 per ton,
- If undercutting of excavated materials in or out is required, \$70 per ton.
- If site requires graded and installed:
  - Crush concrete, \$35 per ton;
  - Limestone, \$45 per ton.
- Surcharges as noted under Economic Price Adjustment.
- Permits as noted under Permits
- Property access as noted under Property

**ECONOMIC PRICE ADJUSTMENT – FUEL SURCHARGE:** TNA shall implement a fuel surcharge as a result of a national or worldwide catastrophe that causes the "Weekly US On-Highway Diesel Fuel Price" for the Midwest (PADD 2) region to exceed \$4.50/gallon (The Base Price). Prices shall be tracked using information obtained through the Energy Information Administration, United States Department of Energy's (EIA DOE) web site: <https://www.eia.gov/petroleum/gasdiesel/> which is updated every Monday. While the base price exceeds \$4.50 per gallon the fuel surcharge will be assessed as follows:

\$2.50 per ton of asphalt delivered  
\$5.00 per yard of concrete delivered

In the event the base price increases above \$5.00 per gallon, the surcharge fee will increase at a rate of \$1.75 per ton asphalt and/or \$2.50 per yard of concrete for each twenty-four (\$0.24) cent increase in fuel costs. Fuel surcharges will be reviewed and updated monthly once implemented. Surcharges will remain in effect until such times a fuel prices decrease below the Base Price.

**ECONOMIC PRICE ADJUSTMENT – VENDOR ISSUED SURCHARGE:**

TNA shall pass through any economic surcharges assessed by its vendors subsequent to the signing of this contract. Economic surcharges may include but are not limited to: Fuel, Labor, Governmental, health related (such as COVID surcharge), etc. In cases of fuel surcharges, TNA will only collect amounts in excess of amounts collected per TNA fuel surcharge as noted above.

**PERMITS:** Customers of the work shall obtain and pay for any and all permits, inspections or assessments if they are required, unless otherwise noted. Permits applied for and secured by TNA will be invoiced at cost plus 20% processing fee with \$300 minimum charge.

**PROPERTY LINES AND ACCESS:** The Customer shall establish and designate property lines, and shall be obligated to pay for work performed as ordered in the event the property lines established and designated by Customer trespass on other property. Also, the Customer shall be responsible for any damages caused hereby to the owner of any property encroached on by work specified in this proposal. The Customer is responsible to provide and maintain TNA's access to the property at all times during the project. Any costs, assessed to TNA for property access, will be invoiced at cost plus 20% processing fee with \$300 minimum charge.

**FORCE MAJEURE AND DELAYS/TIME OF COMPLETION:** TNA shall complete this work within a reasonable time, but shall not be liable for any damages of any kind for delays beyond the control of the contractor, including omissions or failure to act on the part of customer or its agents or employees. In no event shall TNA be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that TNA shall use reasonable efforts which are consistent with accepted practices in the construction industry to resume performance as soon as practicable under the circumstances.

**WEATHER CONDITIONS:** TNA offers no warranty on sealer applied after October 1<sup>st</sup>. Effective October 1<sup>st</sup>, jobs are subject to winter conditions (50 degrees or below). Roller marks and asphalt marks may be visible due to cold weather temperatures. TNA will not be held responsible for any acts of Mother Nature. Includes damage from sealer washing or windblown sealer on property. Further, TNA is not responsible for sealer damaged by weather or another Force Majeure

**SUB GRADES:** No material shall be placed on a wet, unstable or frozen subgrade. A suitable subgrade is a condition precedent to the requirement of performance of this contract.

**MINIMUM GRADE:** TNA reserves the right to refuse to construct a pavement unless minimum grades of 1% are possible for surface drainage. If construction is performed with less than a minimum grade of 1%, it is understood that water ponding may occur and that there is no warranty attached to the work as to satisfactory surface drainage. Depressions over 3/4" can be filled.

**WATER DRAINAGE:** TNA will make water drain as best as possible. However, we make no guarantees against drainage of new or old pavement of any type when resurfacing and not replacing the project in its entirety.

**ZONING REQUIREMENTS & REGULATIONS:** TNA assumes no responsibility for determining whether Customer has the legal right or authority to perform the work as specified. Notwithstanding that such work might be deemed to violate any ordinance, zoning regulation, or other law, the Customer shall, nevertheless, be obligated to pay for the work performed as ordered.

**REPRODUCTION OF CRACKS:** When resurfacing existing pavement of any type, TNA is not responsible for the reproduction of cracks ("reflective cracking") which may occur when resurfacing existing asphalt.

**STOCKPILING MATERIALS:** TNA shall be permitted to stockpile materials necessary to perform its work on the Customer's property or adjacent to the site of the work at no cost.

**HIDDEN OBJECTS:** TNA assumes no responsibility for removing hidden objects encountered during the performance of their work, nor the cost associated with same.

**THICKNESS OF ASPHALT PAVEMENT:** All descriptions of pavement in this proposal refer to average thickness. Variations in subgrade and technical limitations may result in variations from the average. TNA warrants that sufficient material will be used on the project as to result in the average thickness specified.

**SOIL CONDITIONS:** TNA assumes no responsibility for any unusual soil conditions encountered that are not specifically referred to in this proposal. Also, TNA assumes no responsibility for the excavation, removal or disposal of any contaminated soils encountered during any excavation for the Customer. The Customer will pay any extra cost for such conditions incurred by TNA.

**TREE ROOTS:** Contractor shall not be responsible for any damage to trees occasioned by the removal of tree or tree roots in preparing the site.

**ADDITIONAL SURFACES:** Contractor shall not be responsible for any damage to surfaces traversed by equipment to work areas.

**UNDERGROUND STRUCTURES:** It is the Customer's responsibility to advise contractor of the existence and location of all underground structures such as sewers, water lines, gas lines, etc., which might be encountered by TNA in the performance of its work. TNA shall be deemed to have notice of the existence of only those structures specifically referred to in this proposal and of the location thereof as indicated in this proposal. If a condition develops in the performance of TNA's work where the identity or location of the underground structures varies from those specified herein, any extra cost incurred thereby in moving, protecting or covering same, or otherwise, shall be borne by the Customer.

**STREET PRINT®:** The sample card replicates as closely as possible the Street Bond Surface System. Natural pigments are used in the colorants, and as a result some color variation may occur. It is recommended that these colors be applied in an inconspicuous area of asphalt to verify color choice.

**STAMPED CONCRETE:** Color samples shown represent the color of the finished product as closely as possible when sealed with two coats of hard bright sealer. Variations occur due to differences in cement aggregate, water/cement ratio, weather, finishing and application methods.

**INTELLECTUAL PROPERTY:** Company will retain all interest in and to the Service, including all documentation, modifications, improvements, upgrades, derivative words, and all other Intellectual Property rights in connection with the Service, including Company's name, logos, and trademarks reproduced through the Service. "Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright and related rights, trademarks, designs, patents, inventions, goodwill and the right to sue for passing off, rights to inventions, rights to use, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, rights to claim priority from, such rights and all similar or equivalent rights or forms of protection and any other results of intellectual activity which subsist or will subsist now or in the future in any part of the world. This Agreement does not transfer to you any intellectual property owned by TNA or third parties, and all rights, titles, and interests in and to such property will remain (as between the parties) solely with TNA. All trademarks, service marks, graphics and logos used in connection with the Services, are trademarks or registered trademarks of TNA or its licensors. Other trademarks, service marks, graphics and logos used in connection with the Services may be the trademarks of other third parties. Acceptance of this contract grants you no right or license to reproduce or otherwise use any of TNA or third-party trademarks.

**GOVERNING LAW:** These Terms and Conditions and any action related hereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Michigan, USA, without regard to the conflict of laws provisions thereof.

**DISPUTES:** Any dispute arising out of this contract that cannot be resolved between the Customer and TNA shall be submitted to an arbitrator who shall be a registered engineer or architect selected by both parties. In the event the parties cannot agree upon such an arbitrator, the American Institute of Architects shall select the arbitrator and the arbitration proceedings shall be governed by their rules.

- The decision of the arbitrator shall be binding upon the parties and enforceable in a Circuit Court for the State of Michigan. The arbitrator shall be empowered to direct the Escrow Agent to disburse the funds held in escrow to the proper party and to direct such other relief as he determines necessary.
- The cost of the arbitration shall be borne equally by both parties.
- In the event of an anticipatory breach of this contract by Customer, TNA shall be entitled to liquidated damages equal to 25% of the total contract amount.
- The Customer shall pay TNA all costs, including actual attorney's fees, incurred by contractor in enforcing this contract, including collection of any payment due herein.

**LIMITATION OF LIABILITY:** To the fullest extent permitted by applicable law, in no event will TNA, its affiliates, directors, officers, employees, agents, suppliers or licensors be liable to any person for any indirect, incidental, special, punitive, cover or consequential damages (including, without limitation, damages for lost profits, revenue, sales, goodwill, use of content, impact on business, business interruption, loss of anticipated savings, loss of business opportunity) however caused, under any theory of liability, including, without limitation, contract, tort, warranty, breach of statutory duty, negligence or otherwise, even if the liable party has been advised as to the possibility of such damages or could have foreseen such damages. To the maximum extent permitted by applicable law, the aggregate liability of TNA and its affiliates, officers, employees, agents, suppliers and licensors relating to the services will be limited to an amount no greater than one dollar or any amounts actually paid in cash by you to TNA for the prior one-month period prior to the first event or occurrence giving rise to such liability. The limitations and exclusions also apply if this remedy does not fully compensate you for any losses or fails of its essential purpose.

**INDEMNIFICATION:** You agree to indemnify and hold TNA and its affiliates, directors, officers, employees, agents, suppliers and licensors harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, incurred in connection with or arising from any third-party allegations, claims, actions, disputes, or demands asserted against any of them as a result of or relating to your Services or any willful misconduct on your part.

**SEVERABILITY:** All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.

**CHANGES AND AMENDMENTS:** We reserve the right to modify this Agreement or its terms related to the Services at any time at our discretion. When we do, we will revise the updated date at the bottom of this page. We may also provide notice to you in other ways at our discretion, such as through the contact information you have provided.

**NOTICE OF COMMENCEMENT:** Notice of Commencement is requested per Sec. 570.1108a (1)(9)(10)(11) of the Michigan Construction Lien Act 497 of 1980, on any signed contract.