

APEX STONE - TERMS AND CONDITIONS

1. DEFINITIONS

For the purposes of these terms and conditions ("terms and conditions"):-

"Customer" means any one or more of the person named on a quotation, order, sales invoice or an account with the Supplier. –

"goods " means – goods or services or goods and services.

"order" means a purchase order from the Customer to the Supplier.

"services" means installation of goods and all services related to the installation of goods.

"Supplier" means – Apex Stone Pty Ltd (ACN 109711917) and each of its divisions (including Manton Stone, Apex Stone Projects and Apex Stone) subsidiaries, affiliates and "associated entities", "related entities" and "related bodies corporate" within the meaning of the Corporations Act 2001 (CW) and any other firm or company nominated by the Supplier in writing to the Customer as an associated entity of any of the above named entities

2. PRICES, QUOTATIONS

2.1 In the absence of contrary express agreement the price for goods shall be Suppliers list price ruling at the date of delivery and the charge for services supplied shall be at Suppliers prevailing rates at the time of supply. Prices quoted in published price lists or by Suppliers representatives are subject to change without notice and are not binding on Supplier.

2.2 All prices are expressed net of any applicable goods and services tax, freight charges, and customs duty that shall be added to the amount to be paid by Customer.

2.3 A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise until Supplier has accepted Customer's order.

2.4 Delivery of Customer's order to Supplier shall constitute Customer's acknowledgement and acceptance of these terms and conditions.

2.5 All quotations lapse 30 days after issue but Supplier may vary or withdraw quotation at any time.

2.6 In accepting Supplier's quotation Customer warrants and acknowledges that it has not relied on any representation by Supplier or its employees, representatives and agents other than as set out in writing in the quotation.

2.7 Customer shall be liable to pay to Supplier any increase, as may be determined by Supplier, in the cost of providing the goods or services pursuant to a quotation if:

2.7.1 Customer increases or varies the scope of the goods or services to be provided by Supplier;

2.7.2 Customer changes an order after materials have been ordered or production has been commenced;

2.7.3 Customer fails to accept delivery of goods on a scheduled delivery date;

2.7.4 Customer's delivery requirements being beyond the scope referred to in the Customer's order;

2.7.5 Customer requiring goods being delivered in installments or in more than one delivery;

2.7.6 There are delays or complications in delivery of goods due to difficult access to premises, misrepresentations made to Supplier regarding access and description of premises or any failure to provide Supplier with particulars regarding access to and nature of premises;

2.7.7 There are any changes imposed by a third party in connection with the installation and delivery of goods or the provision of services;

2.7.8 There are any increase in taxes, duties or government levies incurred or to be incurred by Supplier after the date of order;

2.7.9 There are any costs of transportation, postage, packaging, taxes, insurances or the need for the supply or use of equipment such as cranes and forklifts that may be required as part of the delivery or installation process and which were not contemplated by Supplier at the time of preparing a quotation or receiving an Order;

2.7.10 There are any alterations, cutouts and tap hole locations which are not clearly marked on templates and Supplier is required to return to the job for that reason;

2.8 These terms and conditions apply to any transaction between Supplier and Customer for any supply of goods or services whether or not a quotation has been given.

3. INDEMNITY

3.1 Customer warrants as a fundamental condition of this contract that all drawings and specifications and other design information supplied by Customer to Supplier shall be accurate in all respects.

3.2 Customer shall indemnify Supplier against all costs incurred when goods are manufactured exclusively to Customer's specification. The supply of such goods cannot be cancelled by Customer.

4. PAYMENT

4.1 Upon placement of an order Customer is required to pay a deposit of 50% of the total price unless otherwise expressly agreed.

4.2 If the deposit has been paid and the order is subsequently cancelled by Customer (for any reason whatsoever) Customer will not be entitled to a refund of the deposit or any part thereof where goods to fulfill the order have been purchased and/or where the production process has commenced. A certificate signed by an officer or senior employee of Supplier to the effect that such goods have been purchased and/or the production process has commenced shall be conclusive evidence of that fact or those facts. In all other cases, the deposit less an administration fee of 10% of the deposit will be refunded.

4.3 In the case of delivery of goods (without installation) the due date for payment of the balance of purchase price is the date of delivery and in the case of delivery of goods (with installation) the due date for payment is the date certified by an officer or employee of the Supplier that installation of the goods has been completed unless otherwise expressly agreed.

4.4 For the purposes of determining the due date for delivery the Customer acknowledges and agrees that it shall be deemed to have accepted delivery immediately the Supplier notifies the Customer that any goods are ready for collection or they are placed with a carrier or delivered to the Customer's business premises or site, whether attended or not, and a certificate signed by an

officer or employee of the Supplier confirming delivery shall be conclusive evidence of delivery, as shall any signed delivery docket.

4.5 Payment of the deposit and the balance of the purchase price shall be made by cash or bank cheque unless otherwise agreed in writing by the Supplier.

4.6 Any amount which remains outstanding after the due date will bear interest payable by the Customer to the Supplier at the rate of 1.5% per month with such interest to be compounded on a monthly basis.

5. DELIVERY

5.1 Supplier accepts no duty or responsibility for delivery of goods to Customer but may elect to arrange delivery at its discretion without any liability and at Customer's cost and responsibility in all things.

5.2 Supplier reserves the right to charge for any costs associated with delivery and such charges may be reflected in the price of goods quoted and/or added as additional charges to Customer.

5.3 Supplier will not be responsible for any damages or loss incurred by Customer as a result of delay in delivery of goods or supply of services.

5.4 Where goods are not delivered, delivered late or delivered at greater expense due to an error in delivery address provided by Customer, any additional costs incurred by Supplier are to be borne by Customer.

5.5 Customer is deemed to have accepted delivery of the goods at the time Supplier notifies Customer that the goods are ready for collection, or where a delivery service is engaged for delivery, when delivered to Customer's site (whether Customer is on site or not).

5.6 Customer is liable for any damages and claims arising out of delivery of the goods, including damage to footpaths, streetscapes or any other property and including fines and/or penalties from local authorities for rectification works in relation to any such damage or claim.

5.7 Customer must inspect the goods upon delivery and within seven (7) days of delivery advise Supplier in writing of:-

5.7.1 Any alleged difference in the quality or quantity of goods supplied compared to goods ordered, and

5.7.2 Any goods that are allegedly defective, and must allow Supplier a reasonable time to inspect any such goods. Should Customer fail to comply with any of these provisions for delivery, the goods are taken to be supplied and delivered as ordered and otherwise in accordance with these terms and conditions.

6. RETENTION OF TITLE

6.1 Customer acknowledges and agrees that title to the goods supplied by Supplier to Customer shall remain with Supplier until the total amount due in respect of the goods and all monies owing to Supplier have been paid in full (the "Debts").

6.2 Until all the Debts have been paid for in full:

6.2.1 Customer shall take custody of the goods as trustee, fiduciary agent and bailee for Supplier;

6.2.2 Customer shall keep Supplier's goods separate from any other goods and properly marked, stored, protected and insured.

6.2.3 Customer must hold all of the money it receives ("*Proceeds*");

6.2.3.1 From sale of any property into which goods supplied by Supplier have been incorporated; or

6.2.3.2 For the sale of goods or provision of services including the goods and services supplied by Supplier

6.2.3.3 As bailee, fiduciary agent and trustee for Supplier, but Customer need not hold on trust any money exceeding the amount of the Debts at the time the money is received. Receipt by Customer of payment shall be treated as conclusive evidence that it has received proceeds. Customer need not hold on trust any money exceeding the amount of the Debts at the time the money is received. Receipt by Customer of payment shall be treated as conclusive evidence that it has received proceeds.

6.2.4 Customer expressly acknowledges that it is bound by fiduciary obligation created in the preceding paragraph and acknowledges that:

6.2.4.1 It must hold the Proceeds on trust for Supplier;

6.2.4.2 It must place the whole of the Proceeds in an account separate from its own moneys ("*the Proceeds Account*").

6.2.4.3 It must maintain the Proceeds Account separate from its own moneys at all times.

6.2.4.4 It must maintain proper records for the Proceeds Account.

6.2.4.5 It must not assign or encumber any book debts arising from sales made in circumstances set out in clauses 6.2.3.1 and 6.2.3.2 or do any other acts in derogation of the Seller's legal or beneficial interests.

6.2.4.6 It must account to Supplier on demand for all moneys standing to the credit of such account.

6.2.4.7 Supplier may appropriate payments as it thinks fit, notwithstanding any contrary appropriation by Customer.

6.2.4.8 For the purposes of identification of different consignments of goods and services purchased from Supplier and receipt of Proceeds, Customer agrees that the principle of "Last In, First Out" shall be applied to any items that cannot be distinguished.

6.2.4.9 Supplier may trace the Proceeds in equity.

6.2.5 On demand by Supplier Customer must assign to Supplier all book debts not exceeding the amount of the Debt at the date of demand.

6.2.6 Supplier may at any time, without notice to Customer and without prejudice to any other rights which it may have against Customer, terminate any contract connected with the goods and the bailments referred to in this paragraph 6, and enter upon any premises owned or occupied by Customer where Supplier reasonably believes the goods may be stored, repossess the goods without liability for any damage caused, and subsequently dispose of the goods at Supplier's discretion if:

6.2.6.1 The Debts are not paid in accordance with these Terms and Conditions and any other contract or arrangement between Supplier and Customer.

6.2.6.2 Supplier receives notice of or reasonably believes that:

6.2.6.2.1 A third person may attempt to levy execution against the goods;

6.2.6.2.2 Customer is insolvent (within the meaning of the *Corporations Law*) or bankrupt;

- 6.2.6.2.3 Customer has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
- 6.2.7 If after repossession under paragraph 6.2.6 Supplier sells the goods, Supplier shall account to Customer for any excess of the proceeds of sale (less expenses of repossession and sale) over the Debts.
- 6.2.8 If any goods belonging to Supplier are disposed of by Customer or an insurance claim is made in respect of them, Supplier shall be entitled to trace the sale, disposal or insurance proceeds, which proceeds shall be held by Customer in a separate bank account on trust for Supplier.
- 6.3 Customer agrees that a certificate purporting to be signed by an officer of Supplier identifying goods shall be conclusive evidence of Supplier's title thereto.
- 7. PERSONAL PROPERTY SECURITIES ACT 2009**
- 7.1 Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of section 20 of the *Personal Property Securities Act 2009* ("PPSA") and that a security interest exists in all goods (and their proceeds) previously supplied by Supplier to Customer (if any) and in all in future goods (and their proceeds).
- 7.2 Customer will execute documents and do such further acts as may be required by Supplier to register the security interest granted to Supplier under these Terms and Conditions under PPSA.
- 7.3 Until ownership of the goods passes, Customer waives its rights under the following provisions of Chapter 4 of the PPSA:
- 7.3.1 to receive a notice of intention of removal of an accession (section 95);
- 7.3.2 to receive a notice that Supplier decides to enforce its security interest in accordance with land law (section 118);
- 7.3.3 to receive notice on enforcement of security in liquid assets (section 120);
- 7.3.4 to receive a notice on enforcement action against liquid assets (section 121(4));
- 7.3.5 to receive a notice to seize collateral (section 123);
- 7.3.6 to receive notice on enforcement of security interests in liquid assets (section 125);
- 7.3.7 to receive a notice of disposal of goods by Supplier purchasing the goods (section 129);
- 7.3.8 to receive a notice to dispose of goods (section 130);
- 7.3.9 to receive a statement of account following disposal of goods (section 132(2));
- 7.3.10 to receive a statement of account if no disposal of goods for each 6 month period (section 132(4));
- 7.3.11 to receive notice of any proposal of Supplier to retain goods (section 135(2));
- 7.3.12 to object to any proposal of Supplier to either retain or dispose of goods (section 137(2));
- 7.3.13 to redeem the goods (section 142);
- 7.3.14 to reinstate the security agreement (section 143);
- 7.3.15 to receive a notice of any verification statement (see section 157(1) and section 157(3)).
- 7.4 Customer further agrees that where Supplier has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- 7.5 Until ownership of the goods passes, Customer must not give to Supplier a written demand or allow any other person to give Supplier a written demand requiring Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- 7.6 Customer acknowledges that it has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Supplier under these Terms and Conditions.
- 7.7 Customer irrevocably grants to Supplier the right to enter upon Customer's property or premises, without notice, and without being in any way liable to Customer or to any third party, if Supplier has cause to exercise any of the Supplier's rights under section 123 and/or section 128 of the PPSA, and Customer shall indemnify Supplier from any claims made by any third party as a result of such exercise.
- 8. SUPPLIERS CANCELLATION**
- 8.1 Supplier reserves the right immediately to cancel any contract for the supply of goods or services or suspend any such supply without incurring any liability to Customer in any of the following circumstances:
- 8.1.1 Customer is overdue with any payment or otherwise in breach of these terms and conditions;
- 8.1.2 Customer enters into bankruptcy, liquidation or a composition with its creditors, has a Receiver Manager or Administrator appointed over all or any part of its assets or becomes insolvent; or
- 8.1.3 Contractual performance is delayed or prevented due to any cause or circumstances.
- 8.2 Cancellation by Supplier under this clause shall be without prejudice to the Supplier's right to recover payment from Customer for goods and services previously supplied or in production.
- 9. PRODUCTS AND SERVICES AND LIABILITY OF SUPPLIER**
- 9.1 Supplier disclaims any responsibility or liability relating to any goods:-
- 9.1.1 Made or performed to designs, drawings, specifications and/or procedures or with materials which are provided or approved in part or in full by or on behalf of Customer;
- 9.1.2 Utilised, stored, handled or maintained incorrectly or inappropriately.
- 9.2 Customer agrees to check all goods for compliance with all applicable industry standards and regulations or standards of regulatory bodies before use, and to use or apply the same in compliance with such standards or regulations and in accordance with Supplier's and all manufacturers recommendations and directions as well as with good commercial and industrial practice.
- 9.3 Due to variations in colour, grain, quality, strength, structure, graining, veining and texture of natural stones such as marble, granite and lime stone used in manufacture of the goods no warranty, condition or guarantee is given by Supplier that any goods shall correspond (in glaze, colour, texture, appearance, blend, strength, quality, grain, veining, structure or otherwise) with any sample, display or any previous goods sold or displayed or any other batch of similarly described goods, and Supplier shall not be liable for any such variations in goods so supplied.
- 9.4 Supplier shall not be liable for any claim, loss or expense on any basis, which may be sustained or incurred by any person by reason of any alleged variation between the goods delivered and the goods ordered.
- 9.5 No sale of goods between Supplier and Customer is to be taken as a sale by sample.
- 9.6 Customer shall check the goods prior to installation and satisfy itself as to the matching of colour, grain, quality, strength, structure and veining.
- 9.7 Customer warrants that any specifications, drawings, designs or other directions given to Supplier in relation to the supply of the goods are accurate in all respects and indemnifies Supplier in relation to all costs for manufacture and supply of the goods in accordance with any such specifications, drawings, designs or other directions and acknowledges that any such manufacture and supply of goods cannot be cancelled.
- 9.8 Supplier takes no responsibility for loss and damage caused due to incorrect fitting or installation of goods.
- 9.9 Customer acknowledges that ceramic tiles are not guaranteed against cracking, chipping, crazing or breaking and that Supplier shall not be liable to Customer for any loss or damage resulting if ceramic tiles crack, chip, craze or break.
- 9.10 Customer agrees that Supplier will not be liable for any delay in or supply or availability of any goods and that Supplier may allocate goods to customers at its unfettered discretion, for example, where demand exceeds supply.
- 9.11 Customer acknowledges that no warranty, condition, description or representation either expressed or implied exists in relation to the goods supplied by Supplier and that to the extent permitted by law all warranties, terms and conditions in relation to the sale, quality or fitness of the goods and of every other kind, whether implied by use, statute or otherwise are hereby excluded.
- 9.12 To the extent permitted by law, Customer acknowledges and agrees that Supplier shall not be liable for physical or financial injury, loss or damages, or for consequential loss or damage of any kind arising out of the supply and installation of the goods or arising out of Supplier's negligence or in any way whatsoever.
- 9.13 Where an engineered (i.e. reconstituted) stone (e.g. Caesar stone, Essa stone, Quantum) is supplied the relevant manufacturer's warranty will apply. A copy of the manufacturer's warranty can be supplied upon request.
- 9.14 Supplier shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any work done in connection therewith except to the extent that any statute applicable to these terms and conditions prevent the exclusion, restriction or modification of such terms and conditions.
- 9.15 Customer indemnifies Supplier against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright in respect of goods manufactured to Customer's specification.
- 9.16 Customer indemnifies Supplier against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by Customer or its servants or agents.
- 10. RISK**
- The risk in the goods shall pass to Customer upon delivery and/or installation of the goods, to the customer or its agent or to a third party nominated by Customer.
- 11. FORCE MAJEURE**
- Supplier will not be in default or in breach of any contract with Customer as a result of Force Majeure. Force Majeure means any event or thing beyond the reasonable control of Supplier and includes any strike or lock-out.
- 12. PRIVACY**
- 12.1 Customer hereby acknowledges that Supplier has informed the customer that the Supplier might disclose to a credit reporting agency personal information (as defined in the Privacy Act 1988 (the Act)) about Customer.
- 12.2 Customer hereby authorises and consents to the Supplier collecting, retaining, recording, using and disclosing personal information about Customer, in accordance with the Act, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by Supplier, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 12.3 Customer also authorises and consents to Supplier making enquiries with respect to Customer's credit worthiness; to exchanging information with other Credit Providers in respect to previous defaults of Customer and to notifying other Credit Providers of a default by Customer.
- 13. GENERAL PROVISIONS**
- 13.1 **Safety** - Customer acknowledges that the cutting and working of stone can create dust. Where such cutting and working is to be performed on site, Supplier will take all reasonable precautions to minimise the creation of dust. It is the sole responsibility of Customer to cover and protect all furniture, equipment and appliances from the effect of dust and to ensure that all persons are sufficiently removed from the site of such works whilst the works are being carried out.
- 13.2 **Severability** - Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 13.3 **Governing Law and Jurisdiction** - These terms and conditions are governed by the law in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State and any courts which may hear appeals from those courts in respect of any proceedings in connection with these terms and conditions.
- 13.4 **Errors** - All clerical errors are subject to corrections and shall not bind Supplier.
- 13.5 **Employees** - No Employee of Supplier is authorised to bind Supplier unless Supplier has given Customer express written notice to that effect.
- 13.6 **Validity of Terms** - The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.
- 13.7 **Waiver** - Supplier's failure to enforce, at any time or any period of time, any term of any contract incorporating these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.