

CDK STONE PTY. LTD. – TERMS & CONDITIONS OF TRADE | THE CUSTOMER HAS AGREED TO PURCHASE PRODUCTS FROM THE SELLER IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS:

1. DEFINITIONS

In these Terms and Conditions, unless the context otherwise requires:

- 1.1 "Application" means the Seller's credit application form completed with the Customer's details;
- 1.2 "Customer" means the person(s) (including a body corporate) who orders the Products from the Seller (and including any person acting on behalf and with the authority of the Customer);
- 1.3 "Price" means the price payable by the Customer to the Seller for the Products as agreed between the parties in accordance with clause 3 of these Terms and Conditions;
- 1.4 "Products" means goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of services such as the provision of advice or recommendations) and are as described on the invoices, quotation, work authorisation or any other forms provided by the Seller to the Customer;
- 1.5 "Seller" means CDK Stone Pty Ltd (ACN 104 900 647) of 4-6 Freighter Road Moorabbin, Victoria 3189 (telephone +613 8552 6000), and its successors and assigns (and including any person acting on the behalf and with the authority of the Seller); and
- 1.6 "Terms and Conditions" means the terms and conditions of trade set out in this document.

2. ACCEPTANCE

The Customer accepts and agrees to be bound by these Terms and Conditions by signing the Application and/or by submitting an order to the Seller for the supply of Products and/or the by accepting Products supplied by the Seller.

3. PRICE AND PAYMENT

- 3.1 The Price for the Products shall be the price specified in the written quotation, work authorisation or other form provided by the Seller to the Customer, provided that such price has been accepted by the Customer in writing within 30 days of receipt by the Customer.
- 3.2 If no price has been agreed upon in accordance with clause 3.1, the Price for the Products shall be the price indicated on invoices provided by the Seller to the Customer.
- 3.3 The Seller reserves the right to change the quoted Price in the event that the Customer's order is varied.
- 3.4 At the Seller's sole discretion, the Customer may be required to pay a deposit on the Price.
- 3.5 The due date for the payment of the Price will be:
 - (a) the date specified in the written quotation, work authorisation or other form provided by the Seller to the Customer; or
 - (b) if no such date is specified, on the date specified on the invoice for the Products; or
 - (c) if no such date is specified, thirty (30) days after the date of the invoice.
- 3.6 The time for payment of the Price shall be of the essence of these Terms and Conditions.
- 3.7 Payment of the Price may be made by cash, company cheque, bank cheque, credit card, direct credit, letter of credit or by any other method as agreed to between the Customer and the Seller.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.9 A surcharge of up to 5% of the Price may be applied to payments made by credit card.
- 3.10 The Customer must pay all money due to the Seller without deduction or set off and must not withhold any payment on the grounds of alleged non-performance by the Seller of its obligations or for any other reason.
- 3.11 Acceptance by the Seller of payment of a sum less than the full sum due to the Seller will not be an acknowledgment of payment in full or an accord and satisfaction and will not prejudice the Seller's rights to recover the balance due or to pursue any other remedy in respect of any unpaid money.

4. DELIVERY OF PRODUCTS

- 4.1 At the Seller's sole discretion, delivery of the Products shall take place:
 - (a) in the event that the Products are delivered by the Seller or the Seller's nominated carrier, when the Products are set down on the floor of the Customer's nominated address for delivery;
 - (b) in the event the Products are collected from the Seller by the Customer or the Customer's nominated carrier (which carrier shall be deemed to be the Customer's agent) where the Products are transferred to a vehicle or trailer used by the Customer or the Customer's nominated carrier by the Supplier's crane, at the earlier of when:
 - (i) the Products are handled by the Customer or the Customer's nominated carrier; or
 - (ii) the Products are set onto or into the vehicle or trailer; and
 - (c) in the event the Products are collected from the Seller by the Customer or the Customer's nominated carrier (which carrier shall be deemed to be the Customer's agent) without the use of the Seller's crane, at the earlier of when:
 - (i) the Products are handled by the Customer or the Customer's nominated carrier; or
 - (ii) the Products leave the Seller's floor.
- 4.2 Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer. If the third party carrier damages the Products in transit, the Customer is still required to pay the Price for the Products in accordance with clause 3 and all amounts owing to the Seller for the particular Products.
- 4.3 Unless otherwise specified in writing in an invoice, quotation, work authorisation or other form, the costs of delivery of the Products shall be in addition to the Price or for the Customer's account.
- 4.4 The Customer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Products as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.5 The Seller may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- 4.6 The failure of the Seller to deliver shall not entitle either party to treat these Terms and Conditions as repudiated.
- 4.7 The Seller shall not be liable for any loss or damage suffered by the Customer as a result of any failure by the Seller to deliver the Products (or any of them) promptly or at all.
- 4.8 The Seller may charge a storage fee if Customer orders a Product but does not want the Product delivered immediately upon becoming available.

5. RETENTION OF TITLE

- 5.1 Following delivery, ownership of the Products shall not pass to the Customer unless or until:
 - (a) the Customer has paid the Seller the Price and all amounts owing to the Seller for the particular Products; and
 - (b) the Customer has met all other obligations due by the Customer to the Seller in respect of these Terms and Conditions and any other agreements between the Seller and the Customer, and until such time the Products shall remain the sole and absolute property of the Seller as legal and beneficial owner.
- 5.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership and rights in respect of the Products shall continue.

- 5.3 Until the Seller has received payment for the Price and all amounts owing to the Seller for the particular Products in full:
 - (a) the Seller shall have the right of stopping the Products in transit whether or not delivery has been made;
 - (b) where practicable, the Customer must ensure that the Products are kept separate and identifiable;
 - (c) the Customer must not charge the Products in any way nor grant nor otherwise give any interest in the Products;
 - (d) the Seller may give notice in writing requiring the Customer to return the Products or any of them to the Seller, and if the Customer fails to return the Products within a reasonable time then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer where the Products are situated as the invitee of the Customer to take possession and remove the Products and the Seller shall not be liable for any damage, injury or loss however caused resulting from the recovery of the Products;
 - (e) the Customer is only a bailee of the Products and the Customer shall hold any proceeds from the sale or disposal of the Products on trust for the Seller, either in a separate account or clearly identified in the books and records of the Customer as being so held for the Seller;
 - (f) if the Products are converted into other products the Seller will be the owner of the end products; and
 - (g) the Seller can issue proceedings to recover the Price of the Products sold and all amounts owing to the Seller for the particular Products notwithstanding that ownership of the Products may not have passed to the Customer.

5.4 The Customer acknowledges that:

- (a) these Terms and Conditions constitute a "security agreement" for the purposes of the Personal Property Securities Act 2009 (Cth) and regulations made under that Act ("PPSA");
- (b) under this security agreement, the Seller is the "secured party", the Customer is the "grantor" and the Product supplied by the Seller to the Customer pursuant to these Terms and Conditions is "collateral", including Product that is supplied to the Customer both before and after this security agreement is made;
- (c) the Customer grants a "purchase money security interest" to the Seller in the Product as collateral pursuant to this security agreement for the purposes of the PPSA;
- (d) the Seller has or will register its purchase money security interest in the Product as collateral in accordance with the PPSA;
- (e) at the Seller's request, the Customer must, at its cost, do anything considered by the Seller in its absolute discretion to be necessary for the purposes of ensuring that the Seller's purchase money security interest is able to be registered on the Personal Property Securities Register and is enforceable, perfected and effective to give the Seller priority for the purchase money security interest in the event of insolvency of the Customer or otherwise;
- (f) the Seller is not required to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

6. RISK

- 6.1 All risk for the Products passes to the Customer on delivery pursuant to clause 4.1 irrespective of whether ownership in the Products has passed to the Customer.
- 6.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Products. The production of these Terms and Conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 The Customer acknowledges that the Seller will not accept responsibility for damage to Products after delivery pursuant to clause 4.1 and that the Seller should ensure that they or their nominated carrier have sufficient insurance to cover the Products during transit including loading and unloading.

7. DEFECTS

- 7.1 If the Customer believes that any Product delivered is defective at the date of delivery or that the Product delivered does not correspond with the Customer's order in terms of type, quantity, variety or otherwise, the Customer must notify the Seller within seven (7) days of delivery.
- 7.2 Save where a defect or error is not readily apparent in any reasonably conducted inspection of the Product at the time of delivery, if the Customer fails to notify the Seller pursuant to clause 7.1, the Customer is deemed to accept the Product and loses all rights it would otherwise have against the Seller in respect of the matters referred to in clause 7.1.
- 7.3 For Products which the Seller has agreed in writing are defective or were delivered in error, the Seller's liability is limited to either (at the Seller's discretion):
 - (a) replacement of the Products; or
 - (b) repair of the Products, except where the Customer has acquired the Products as a consumer (as defined in the Australian Consumer Law) as set out in clause 7.12.
- 7.4 Subject to these Terms and Conditions, the Seller warrants that if any defect in any workmanship of the Seller that was not readily apparent in any reasonably conducted inspection of the Product at the time of delivery becomes apparent and is notified to the Seller within three (3) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
- 7.5 A claim made pursuant to the warranties set out in this clause must be made in writing to the Seller at 4-6 Freighter Road Moorabbin, Victoria 3189 (telephone +613 8552 6000).
- 7.6 A Customer shall only be entitled to make a claim pursuant to the warranties set out in this clause if they afford the Seller an opportunity to inspect the Products within a reasonable time upon request to confirm the defect or error in delivery.
- 7.7 The Customer is responsible for all costs associated with claiming under the warranties set out in this clause, unless the Seller agrees otherwise in its sole discretion.
- 7.8 The warranties set out in this clause shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (a) failure on the part of the Customer to properly maintain any Products; or
 - (b) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; or
 - (c) a use of the Products in a manner inconsistent with any uses specified in a written quotation, work authorisation or other form for the Products; or
 - (d) the continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (e) fair wear and tear; or
 - (f) an event of force majeure pursuant to clause 18.
- 7.9 If the workmanship of the Seller is repaired, altered or overhauled without the Seller's consent, the warranties set out in this clause shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranties.

- 7.10 The Seller shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim under these warranties.
- 7.11 For Products not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Products. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of those Products.
- 7.12 **ADDITIONAL INFORMATION FOR CUSTOMERS WHO PURCHASE PRODUCTS AS CONSUMERS (AS DEFINED BY THE AUSTRALIAN CONSUMER LAW):**
Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
The warranties in clause 7 of these Terms and Conditions are in addition to any other rights and remedies that you may have under the Australian Consumer Law.

8. RETURNS

- 8.1 The Seller may (in its sole discretion) accept the return of Products that are not defective, but only if:
- the Customer requests the return in writing within seven (7) days of delivery;
 - the Customer provides proof of purchase if requested;
 - the Seller has agreed in writing to accept the return of the Products;
 - the Products are returned at the Customer's cost within thirty (30) days of the delivery date;
 - the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances; and
 - the Customer pays a restocking fee to be determined by the Seller of up to 30% of the Price of the returned Products.
- 8.2 Product procured and supplied by the Seller at the specific request of a Customer will not be accepted for return (except in accordance with clauses 7 and 8).

9. DEFAULT & CONSEQUENCES OF DEFAULT

- 9.1 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 9.2 Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at the interest rate fixed from time to time by the Penalty Interest Rates Act 1983 (Vic) and such interest shall compound monthly.
- 9.3 Without prejudice to any other remedies the Seller may have, if at any time, the Seller may suspend or terminate the supply of Products to the Customer and any of its other obligations under the Terms and Conditions.
- 9.4 Without prejudice to any other remedies the Seller may have, the Seller may suspend or terminate all or any part of any order of the Customer which remains unfulfilled in the event that:
- the Customer is in breach of any obligation (including those relating to payment) under these Terms and Conditions; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise), controlling trustee, trustee in bankruptcy or similar person is appointed in respect of the Customer or any asset of the Customer.
- 9.5 If the Seller suspends or terminates all or any part of a Customer's order pursuant to clause 9.4:
- all amounts owing by the Customer to the Seller shall, whether or not due for payment, become immediately payable; and
 - the Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under that clause.

10. CANCELLATION

- 10.1 The Seller may reject any order for Products and/or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Customer and on giving such notice the Seller shall:
- repay to the Customer any sums paid in respect of the Price and/or GST; and
 - not be liable to the Customer for any loss or damage howsoever arising from such cancellation.
- 10.2 In the event that the Customer cancels an order and/or delivery of Products:
- the Seller may retain any deposit paid by the Customer in respect of the Products; and
 - the Customer shall be liable to the Seller for any additional losses incurred by the Seller as a result of the cancellation (including, but not limited to, delivery costs, storage costs and any loss of profits).

11. LIMITATION OF LIABILITY

- 11.1 The Customer acknowledges that the Products are bought relying solely upon the Customer's skill and judgement.
- 11.2 Any advice, recommendations, information, assistance or service provided by the Seller to the Customer in relation to the Products sold or their use or application is provided in good faith and the Seller believes such advice to be appropriate and reliable. Any such advice in relation to any Products sold by the Seller is provided, however, without liability or responsibility on the part of the Seller.
- 11.3 To the extent required under common law and any applicable legislation, the Seller acknowledges that liability may attach in relation to (and be limited solely to) personal injury or property damage arising out of any negligence on behalf of the Seller in provision of the Products.
- 11.4 In the event of any breach of these Terms & Conditions by the Seller, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Products. The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer.

12. CREDIT CHECK

- 12.1 In this clause, a reference to the Customer includes a reference to any person(s) and/or entity(s) who agree to guarantee the obligations of the Customer and to assume liability for the Customer's debts on a principal debtor basis.
- 12.2 The Customer agrees that the Seller may obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.

- 12.3 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an Application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the credit worthiness of the Customer.
- 12.4 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit pursuant to section 18(1)(h) of the Privacy Act 1988 (Cth).
- 12.5 The Customer agrees that personal credit information it provides to the Seller may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed with the Seller or required by law from time to time:
- provision of Products; and/or
 - marketing of Products by the Seller, its agents or distributors in relation to the Products; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Products; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Products.
- 12.6 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer; and/or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

13. JOINT AND SEVERAL

Where the Customer consists of more than one person, the Customers shall be jointly and severally liable for the obligations set out in these Terms and Conditions including but not limited to the payment of the Price and all amounts owing to the Seller for the particular Products.

14. CHANGE IN CONTROL

- 14.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed:
- change of control of the Customer (as defined by section 50AA of the Corporations Act 2001 (Cth)) if the Customer is a body corporate;
 - any change in the Customer's company or trading name; or
 - any other change in the Customer's address or contact details.
- 14.2 The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause 14.

15. SEVERANCE

- 15.1 Nothing in these Terms and Conditions is intended to have the effect of contracting out of any applicable provisions of any state or federal legislation (including but not limited to the Australian Consumer Law), except to the extent permitted by such legislation where applicable.
- 15.2 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16. GOVERNING LAW

- 16.1 These Terms and Conditions shall be governed by the laws of Victoria.
- 16.2 The Seller and the Customer irrevocably submit to the exclusive jurisdiction of the courts of Victoria.

17. SUB-CONTRACT

The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

18. FORCE MAJEURE

The Seller shall not be liable for any default of these Terms and Conditions due to any event of force majeure including but not limited to war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond its reasonable control.

19. WAIVER

The failure by the Seller to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

20. INCONSISTENCY

Where these Terms and Conditions are inconsistent with a written quotation, work authorisation or other form provided by the Seller to the Customer, the provisions of that written quotation, work authorisation or other form will prevail to the extent of the inconsistency.

21. WHOLE AGREEMENT

- 21.1 These Terms and Conditions (together with the Application and any written quotation, work authorisation or other form provided by the Seller to the Customer) form the entire agreement between the Seller and the Customer.
- 21.2 All conversations, representations and statements not confirmed in writing by the Seller are expressly excluded and shall not be deemed to be part of any quotation, invoice, order, agreement or contract, or to have induced the order of the Products, or to have any legal effect whatsoever.

22. AMENDMENT

- 22.1 These Terms and Conditions supersede all previous terms and conditions of trade of the Seller.
- 22.2 The Seller reserves the right to review these Terms and Conditions at any time.
- 22.3 If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 22.4 The Customer's acceptance of any amendments to these Terms and Conditions will be evidenced by the Customer's acknowledgement in writing or by the Customer submitting a further order of Products to the Seller after receiving notification of the amendments without the need for the Customer to provide any other formal notification of its acceptance to Seller.