



Jetmaster Vic.

TERMS AND CONDITIONS OF SUPPLY

The following terms ("Terms") apply where the Supplier supplies goods to the Customer.

1. INTERPRETATION

a. In these terms: "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the Fair Trading Act 1999 (Vic), "Consumer" has the meaning given to it in section 3 of the Australian Consumer Law, "Consumer Goods" means goods of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in section 3 of the Australian Consumer Law, "Consumer Guarantee" has the meaning given to it in section 3 of the Australian Consumer Law, "Contract" means the contract between the Supplier and the Customer which consists of the Credit Application, these Terms, and all Purchase Orders for Goods and Services given by the Customer to the Seller; "Customer" means the person whose order for the supply of goods is accepted by the Supplier, "PPSA" means the Personal Property Securities Act 2009 (Cth), "PPS Law" means (a) the PPSA; (b) any regulations made at any time under the PPSA; (c) any provision of the PPSA or regulations referred to in (b) above; (d) any amendment to any of the above made at any time; or (e) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in (a) to (d) above, "Supply Agreement" means these terms and conditions of supply, the credit terms (if applicable) and all accepted purchase orders for goods placed by the Customer to the Supplier; "Title Guarantee" means a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.

b. Clauses 1(c) and 1(e) shall not apply to a Consumer.

c. Unless the Supplier otherwise agrees in writing, these Terms contain the only terms of sale to which the Supplier will be bound in connection with the supply of goods to the Customer.

d. The Customer agrees that these Terms will in all circumstances prevail over the Customer's terms of purchase (if any).

e. These Terms supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the goods including, but not limited to, those relating to the performance of the goods or the results that ought to be expected from using the goods.

f. Without limiting any other mode of acceptance of these Terms exercised by the Customer, the Customer acknowledges that by accepting delivery of the goods and/or any credit terms offered by the Supplier, the Customer, by such conduct agrees to be bound by these Terms. Where the Customer is not a Consumer, these Terms will apply to the exclusion of all other terms of purchase or supply.

2. PRICE

All prices quoted are exclusive of GST, insurance and delivery charges. At the Supplier's discretion the price of the goods will be:

a. the Supplier's current price at the date of the delivery of the goods according to the Supplier's current price list, which may be varied from time to time; or

b. the Supplier's quoted price which will be binding on the Supplier for a period of 30 days from the date of quotation and which may be accepted by the Customer, by written notice to the Supplier, at any time within those 30 days.

3. PURCHASE ORDERS

a. The Supplier reserves the right to accept or reject in its absolute discretion any purchase order, or part of a purchase order, placed by the Customer without giving reasons. Acceptance of a purchase order by the Supplier may be by supply of all or part of the goods ordered.

b. The Supplier may cancel the supply of goods at any time before the delivery of any instalment of the goods by written notice to the Customer. Except where the Customer is a Consumer, the Supplier is not liable for any loss arising from such cancellation.

c. The Customer may not, without the Supplier's prior consent, cancel a purchase order after the Supplier has accepted the purchase order. If the Supplier consents to the cancellation of a purchase order, the Customer will be liable for any costs incurred by the Supplier up to the time of cancellation.

4. PAYMENT

a. The Customer agrees to and will pay for the goods in accordance with each invoice rendered by the Supplier namely either by:

i. payment in full prior to delivery of the goods;

ii. Cash on delivery; or

iii. Terms as stated.

b. If the Supplier extends credit terms to the Customer, payment for all goods sold must be within thirty (30) days from the date of the invoice. Without prejudice to any other rights or remedies of the Supplier, interest is payable by the Customer, immediately on demand by the Supplier on all amounts overdue to the Supplier from the payment due date until payment, at the rate of 2% per annum above the average of the most recent prime rate, indicator rate or reference rate (however described) for business overdrafts published by Commonwealth Bank of Australia to cover the Supplier's administrative expenses in recovering any overdue amounts. Such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly. Where payment is not made by the due date, the Customer shall, in addition to any other obligations imposed hereunder, pay to the Supplier on demand all costs incurred by the Supplier (including but not limited to and legal costs on a full indemnity basis).

c. All payments received by the Supplier will be applied in the following order:



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- i. towards any costs of the Supplier referred to above (or any part thereof);
- ii. towards any interest payable as set out above (or any part thereof); and
- iii. towards any other amounts payable by the Customer to the Supplier.
- d. Time of payment for any goods sold to the Customer is an essential term of these Terms.

5. RISK

a. The risk in the goods passes to the Customer when all or part of the goods are loaded for consignment at the Supplier's warehouse. Title to the goods passes to the Customer on payment in full of the price for the goods. The Supplier's rights under this clause 5 secures a. the Supplier's right to receive the price for the goods and b. all other amounts owing to the Supplier under any other contract.

b. Until full payment in cleared funds is received by the Supplier for all goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer under any other contract:

- i. legal title and property in all goods supplied remains vested in the Supplier and does not pass to the Customer;
- ii. subject to (b), the Customer must maintain the Supplier's labelling and packaging with the goods so that the goods are readily identifiable as the property of the Supplier;

Customer must not sell the goods except in the ordinary course of the Customer's business;

iv. the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing of the goods for the Supplier in a separate bank account with a bank to which the Customer has not given any security;

v. in addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it suspects the goods may be located and remove them without committing a trespass, even though they may have been attached to other goods or land not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises and also indemnifies the Supplier from and against all loss suffered or incurred by the Supplier as a result of exercising its rights under this clause. If there is any inconsistency between the Supplier's rights under this clause 5b(v) and its rights under Chapter 4 of the PPSA, this clause 5b(v) prevails;

vi. the Customer acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPSA) in the goods and any proceeds described in sub-clause 5(b)(iv) until title passes to the Customer in accordance with this clause 5. The Customer must do anything reasonably required by the Supplier to enable the Supplier to register its security interest, with the priority the Supplier requires and to maintain that registration; and

vii. the security interest arising under this clause 5 attaches to the goods when the Customer obtains possession of the goods and the parties confirm that they have not agreed that any security interest arising under this clause 5 attaches at any later time.

6. INSURANCE

Where goods have been delivered to the Customer but title has not yet passed to the Customer, the Customer will, at its own cost, insure the goods in the Supplier's name, against such risks as a prudent owner of the goods would insure for at their full insurable value.

7. ACCEPTANCE AND CLAIMS

a. Except where the Customer is a Consumer, acceptance of the goods delivered shall be deemed for all purposes to have taken place at the expiration of 7 days from the date of each delivery. No goods will be accepted for return, except where such return is due to a breach of a Consumer Guarantee ("Faulty Return") and the Customer is a Consumer, unless agreed in writing by the Supplier prior to such return and then only upon conditions acceptable to the Supplier and at the Customer's entire risk as to loss or damage and provided the goods are and remain sealed in a manner in which they were delivered. Except in the case of Faulty Returns, where the Supplier agrees to accept goods for return, a service fee of \$20.00 and a restocking charge of 20% of the price of the goods returned shall be paid by the Customer ("Handling Fee").

b. Except where the Customer is a Consumer, despite anything to the contrary in these Terms, the Supplier will not be liable to make any payment (whether by way of damages or under an indemnity or otherwise) to the Customer for any special, indirect or consequential losses, including loss of profits, loss of business, loss of reputation, loss of goodwill or loss of opportunity, howsoever arising.

c. Except where the Customer is a Consumer, the Supplier is not liable for any loss, however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with a breach of these Terms, whether or not the Supplier was aware of the possibility of such loss to the Customer when these Terms were entered into.

d. Subject to clause 7.e if the Customer is a Consumer the liability of the Supplier for loss, however caused (including by the negligence of the Supplier), suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee is limited to the Supplier (at its election):

- i. replacing the goods or supplying equivalent goods;
- ii. repairing the goods;
- iii. paying the cost of replacing the goods or of acquiring equivalent goods; or
- iv. paying the cost of having the goods repaired.

e. Clause 7.d does not apply if it is not fair or reasonable for the Supplier to rely on it, if the goods are Consumer Goods or in relation to Title Guarantees.



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f. This clause 7.f does not apply if the Customer is a Consumer. Except as expressly provided to the contrary in (i) these Terms, (ii) any condition or warranty which would be implied by law into these Terms or by the United Nations Convention on Contracts for International Sale of Goods, is excluded.

8. FORCE MAJEURE

The supply of goods by the Supplier under these Terms may be totally or partially suspended by the Supplier during any period in which the Supplier may be prevented or hindered from delivering the goods by the Supplier's normal means of supply or delivering by normal route through any circumstances outside its reasonable control including but not limited to war, acts of terror, strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery or failure of delivery by the Supplier's suppliers. The Supplier shall not incur any liability to the Customer in respect of such suspension. The Supplier may terminate any purchase order or these Terms if in the Supplier's reasonable opinion, it believes a force majeure event will prevent it from supplying the goods indefinitely.

9. SPECIAL ORDER

This clause does not apply where the Customer is a Consumer. Where the Customer places an order in writing with the Supplier for non stock items, the Supplier will not accept the return of non stock items unless the manufacturer agrees to accept the return from the Supplier. The Supplier may deduct transport, insurance handling and re stocking charges due to the Customer where any such items are returned to the Supplier and their return is accepted by the Supplier.

10. SUBSTITUTION

This clause does not apply where the Customer is a Consumer. The Supplier reserves the right to substitute some other make or brand with similar specifications if any item ordered by the Customer is not available. The Customer is deemed to have accepted substitution where it does not object to same within 7 days from the date of delivery of the goods (unless a longer period is imposed by law). If the Customer is not satisfied with the substituted goods, the goods may be returned to the Supplier for credit.

11. DELIVERY

The Supplier may deliver the goods by instalment or partial shipment and the Customer will accept each such delivery. Where the Customer re-sells or distributes the goods to any third parties, it shall be responsible for ensuring that it provides detailed instructions to those third parties regarding the safe storage, handling and use of the goods and any cylinders, drums or other packaging in which the goods are stored.

12. WARRANTY

Except only for those rights and remedies that the Customer has in respect of the goods under the Competition and Consumer Act 2010 (Cth) and similar state and territory laws applicable to Consumers and which cannot be lawfully excluded, restricted or modified:

- a. all conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the goods; and
- b. the Supplier is not liable to the Customer for any loss which the Customer suffers, incurs or is liable for in connection with the supply of the goods under these Terms, except in accordance with clause 7.

13. HANDLING INSTRUCTIONS - MARBLE

a. The following information is principally designed to address issues that arise when specifying and working with goods made of granite and marble. The quality and specification of the goods shall be those as set out in the purchase order, however the Customer must be aware, and ensure that all customers of the Customer are made aware before they purchase the goods, that this is subject always to the following:

- i. marble is a natural element and can vary in colour variations, markings, cracks and vents. It is for this reason that the Supplier does not guarantee the colouring or character of the marble delivered and fitted will be an exact match to any sample offered;
- ii. marble fabrication is not an exact science and slight tolerances in both overhangs and thickness are to be expected;
- iii. care must be taken to ensure any spilt liquids are mopped up immediately such as cigarettes, hot oil, lemon juice, wine, detergents, alcohol and acidic or alkaline substances. Remember, stones cannot be rendered impervious to all marking and staining;
- iv. for a long lasting finish granite and marble should be treated at regular intervals;
- v. marble is by its very nature a very dense and heavy material and weighs in excess of 90 kilos per square metre. The Supplier reserves the right to add joints where it feels necessary, commensurate with health and safety guidelines and accessibilities; and
- vi. any descriptions of the goods offered are for guidance only.

b. The Customer, and all customers of the Customer, must handle the goods in accordance with any handling instructions supplied with the good.

14. MODIFICATION

The Supplier may vary these Terms at any time. The Supplier must give the Customer written notice of any changes. By ordering further goods or paying the next invoice after notification of any changes to these Terms, the Customer accepts and is bound by the changed Supply Agreement from that date. If the Customer does not accept any change, it must immediately notify the Supplier to terminate this Contract. Any purchase orders outstanding at the time of cancellation of this Contract will be completed in accordance with the un-changed Contract.



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15. GOODS AND SERVICES TAX (GST)

- a. But for this clause, all amounts expressed or described in these Terms between the Supplier and the Customer are GST (within the meaning of A New Tax System Goods and Services Act 1999 as amended from time to time (**GST**) exclusive amounts.
- b. Subject to clause 15 (a), if any GST is payable by any party (**Supplier**) in respect of the supply of any goods, services, real property or any other things to another party (**Customer**), then the amount expressed or described in an invoice (**Original Amount**) is to be increased so that the Supplier receives an amount (**Increased Amount**) which, after subtracting the GST liability of the Supplier on that Increased Amount, result in the Supplier retaining the Original Amount after payment of the GST liability.
- c. The Supplier will do all things reasonably available to it to assist the Customer to claim on a timely basis any input tax credits (if any) the Customer may be entitled to claim for any acquisition of goods, services, real property or any other thing from the Supplier. This includes the Supplier maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms on a timely basis as reasonably requested by the Customer.

16. JURISDICTION

These Terms is governed by the laws of the State of Victoria and the parties shall submit to the non exclusive jurisdiction of the Courts of the State of Victoria (and any Courts which can hear appeals from such Courts).

17. REPRESENTATIONS

This clause 18 does not apply if the Customer is a Consumer. No employee, agent or contractor of the Supplier (except where authorised in writing by the managing director of the Supplier) has any authority to give any warranties or make any representations about the performance, specifications or fitness for the purpose of the goods other than those specified in the Supplier's authorised written material. All such unauthorised warranties and representations are expressly excluded.

18. FURTHER ASSURANCES

If at any time the Supplier determines that these Terms (or any of the transactions contemplated by or under it) create a security interest over any of the Supplier's personal property, the Customer must promptly, upon the Supplier's request, do all things necessary (including, without limitation, completing, signing and providing documents, obtaining consents and supplying information) to:

- a. protect any right, title and/or interest of the Supplier in the relevant personal property;
- b. ensure that any such security interest in favour of the Supplier is enforceable, perfected (including, where applicable, by control as well as by registration), maintained and otherwise fully effective and ranks as a first priority security interest;
- c. enable the Supplier to prepare and register a financing statement or a financing change statement; and
- d. enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such Security Interest or under the PPS Law.

20. ENFORCEMENT OF SECURITY INTEREST

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the Customer agrees that the following provisions of the PPSA will not apply:

- a. section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
- b. section 121(4) (enforcement of liquid assets – notice to a grantor);
- c. section 130 (notice of disposal), to the extent it requires the Supplier to give a notice;;
- d. paragraph 132(3)(d) (contents of statement of account after disposal);
- e. subsection 132(4) (statement of account if no disposal);
- f. section 135 (notice of retention);
- g. section 142 (redemption of collateral);
- h. section 143 (reinstatement of security agreement); and
- i. any further notice or statement under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

21. CONFIDENTIALITY

Subject to section 275(7) of the PPSA, neither party will disclose information of the kind mentioned in section 275(1) of the PPSA.