

Terms and Conditions of Sale - Kimberley Sandstone Pty Ltd - ABN 29 643 677 482

1. Order and Supply

1.1 The Buyer acknowledges and agrees that the purchase of any Goods from the Seller is on these terms and conditions of sale ("Terms").

1.2 The placing of an Order via by the Buyer constitutes acceptance of the Terms.

1.3 The supply of Goods is subject to availability. The Seller reserves the right to suspend or discontinue the supply of Goods to the Buyer. If the Seller is unable to supply all of the Goods quoted, the Terms continue to apply to any part of the quotation supplied.

2. Payment

2.1 Unless the Buyer has an approved credit account with the Seller, payment in full shall be made in cash prior to the delivery of each consignment of Goods. The Seller is not obliged to deliver the relevant consignment of Goods unless and until payment in full has been made in cash.

2.2 Where the Buyer has an approved credit account with the Seller:

(a) the Buyer acknowledges having been provided with a copy of the Terms of Trading Agreement. To the extent of any inconsistency between the Terms of Trading Agreement and these terms, the Terms of Trading Agreement will prevail; and

(b) the Buyer must pay for the goods ordered by the Buyer within 30 days of the invoice date or earlier if the approved credit limit is exceeded.

2.3 If the Buyer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of the Terms or an insolvency event in respect of the Buyer arises or is reasonably suspected by the Seller to arise, the Seller may (without limiting any other right or claim it may have against the Buyer) do any or all of the following:

(a) charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at the National Australia Bank Limited's reference rate for business loans plus 2% per annum calculated from the date the payment was due until the date payment is made;

(b) vary or withdraw any approved credit limit or terms of trade;

(c) cancel or suspend any unfilled orders or cease providing the Goods;

(d) terminate any contracts between the Seller and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;

(e) cancel any rebate, discount or allowance due or payable by the Seller as at the date of the event;

(f) enter at any time any premises in which the Seller's goods (including any merchandising materials) are stored, to enable the Seller to inspect the goods and to reclaim possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever;

(g) lodge a caveat or other similar instrument over any property of the Buyer; or (h) institute any recovery process as the Seller in its discretion decides at the Buyer's cost and expense.

2.4 If any part of an invoice is in dispute, the balance will remain payable and must be paid when due.

The Buyer has no right to set off any claim against the Seller for moneys owing to the Seller.

2.5 The Buyer charges to the Seller all of the Buyer's rights, property and undertaking of whatever kind and wherever situated and whether present or future for the purpose of securing payment of all amounts that at any time and for any reason or circumstance and whether at law or otherwise and whether or not of a type within the contemplation of the parties at the date of this agreement, are payable, are owing but not currently payable, are contingently owing, or remain unpaid by the Buyer to the Seller. If the Buyer fails to pay any amount owing to the Seller by the date on which such payment is due, the Seller may appoint one or more receivers to the Buyer's property and undertaking, and may do anything that a receiver could do under law.

3. Price

3.1 The price for all Goods sold shall be at the Seller's list price current at the date of delivery of the Goods. All prices quoted are inclusive of GST and cartage costs where applicable and are subject to variation.

3.2 The Seller may at any time change its price to reflect, among other things, changes and exchange rates or the imposition of any duties, levies or other taxes and the Buyer is bound by those changes. The Seller may charge a reasonable handling fee for all orders delivered to the Buyer.

The Buyer must accept any errors or omissions in invoicing and, where applicable, the Buyer must accept the amended pricing and pay the difference within the approved terms of trade.

4. Delivery

4.1 Unless otherwise agreed in writing by the Seller, delivery is at the Property. If a Delivery Date is specified, that date is an estimate only and the Seller is not liable for any delay in delivery. Time is not of the essence in relation to delivery and the Buyer must accept delivery and pay for the goods delivered including transport costs, if applicable, even if they are delivered after any specified delivery date.

4.2 The Seller in its absolute discretion may by their carrier at the request of the Buyer place the Goods at a designated location on the property at the Property. If the Seller's carriers enter the Property for this purpose it shall be deemed to do so at the invitation of the Buyer and the Buyer warrants that it has possession of the Property and is authorised to invite the Seller's carrier on the Property. The Buyer agrees that the Seller and the Seller's carrier are not liable, and when the Buyer is not the owner of the Property, agrees to indemnify the Seller and the Seller's carrier for any damage, loss or injury to the Goods or to any other Property of whatsoever nature or to any person, cause or contributed to buy the Seller's carrier while the Seller's carrier is complying with the Buyer's request to deliver the Goods to a designated location on the Property.

4.3 The Seller's statement of account showing specification, quantity and place of delivery of the Goods shall be deemed to be prima facie proof of delivery of the specification and quantity of the Goods and of the site of delivery.

5. Inspection

5.1 The Buyer must inspect the Goods immediately following delivery. The Buyer may only return Goods with the prior approval of the Seller. The Goods must be returned within 21 days of Delivery Date in an unsold, undamaged and resaleable condition and, where appropriate in the original packaging. A restocking fee of 20% of the cost of the Goods returned will be charged to the Buyer.

5.2 Any claim that the Goods are not in accordance with these Terms (including if they are defective, damaged during delivery, short delivered) must be made at the time of delivery or in writing to the Seller within 48 hours after delivery of the Goods to the Buyer. If the Buyer fails to make a claim then, to the extent permitted by law, the Goods are deemed to have been accepted by the Buyer and the Buyer must pay for the Goods in accordance with the Terms.

6. Delay and Damage

6.1 The Seller undertakes to complete and deliver each Order by the Delivery Date, provided that the Seller will not be responsible for any loss or damage arising from any delay or failure to deliver the Goods for any reason whatsoever. If requested by the Buyer, the Seller may agree to vary the Delivery Date.

6.2 The Seller accepts no responsibility for the delay in the delivery of or damage to the Goods where:

(a) third party carriers have been used; or

(b) where the Buyer has provided their own freight and off load some arrangement.

7. Cancellation

7.1 Cancellation of Orders must be given to the Seller in writing prior to the commencement of delivery of the Goods. The Buyer must compensate the Seller for any expenses in addition to the fee referred to in clause 7.2 below which the Seller has incurred prior to receipt of notification cancelling the Order. The Seller requires 24 hours to effect the cancellation of the Order.

7.2 A fee of \$100.00 will be levied to cover administrative costs associated with cancelling the Order.

7.3 If the Goods have been delivered or partially loaded onto a vehicle in anticipation of delivery, a restocking fee to the value of 50% of the cost of the Goods, inclusive of GST, will be levied prior to the issuing of a refund.

8. Risk

8.1 Goods supplied by the Seller to the Buyer are at the Buyer's risk immediately on the earlier of delivery to the Buyer or the Buyer's custody, including its carrier or forwarder. The Buyer must insure the Goods at its cost from delivery of the Goods until they are paid for in full against such risks as are usual or common to insure against in a business of a similar nature to the Buyer.

9. Title

9.1 Property in the Goods supplied by the Seller to the Buyer does not pass to the Buyer until those Goods have been paid for in full. Until the Goods have been paid for in full:

(a) the Buyer takes custody of the Goods and retains them only as fiduciary agent and bailee of the Seller;

(b) the Buyer may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of the Seller. The Buyer must not represent to any third party that the Buyer is acting in any capacity for or on behalf of the Seller and the Buyer has no authority to bind the Seller to any contract or otherwise

assume any liability for or on behalf of the Seller. The Buyer receives all proceeds, including any proceeds from insurance claims, in trust for the Seller and must keep the proceeds in a separate bank account until all liability to the Seller is discharged;

(c) if the Buyer uses the Goods in some manufacturing or construction process of its own or of a third party, the Buyer must hold in trust for the Seller that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the Buyer to the Seller at the time of receipt of the proceeds.

10. Quality

10.1 The Buyer agrees that:

(a) all implied conditions and warranties on the part of the Seller in relation to any of the Goods to be supplied by the Seller are excluded to the maximum extent permitted by law;

(b) in respect of any liability which the Seller cannot exclude the Seller's liability is limited, at its option to, the replacement or re-supply of the Goods, or a refund of the cost of the Goods; and

(c) subject to any non-excludable rights conferred on the Buyer by law, no claims in respect of any Goods supplied by the Seller shall be recognised by the Seller unless made in writing and notified by the Buyer to the Seller within 48 hours of delivery of the Goods to the Property.

10.2 The Buyer acknowledges that all Goods which are supplied as "Special" grade Goods or "Seconds" are imperfect or damaged. The Buyer accepts that "Special" grade Goods or "Seconds" are purchased on an as is, where is, as inspected basis and no claims for any loss or damage suffered by the Buyer will be accepted by the Seller.

10.3 The Buyer agrees that some "First Grade" Goods may be chipped, broken, damaged or unusable ("Imperfect Goods"). The Seller recommends that the Imperfect Goods be used for cuts and infill. The Seller will use reasonable endeavours to ensure that the Imperfect Goods do not exceed 5% of the Order.

10.4 The Buyer accepts that all Goods purchased are supplied (unless specifically stated on the Order Form) as "stock" Goods and are not individually selected.

10.5 If the Buyer requires an Order to be:

(a) individually selected, or

(b) to be suitable for a particular purpose,

then the Seller must be notified in writing on the Order Form of this requirement and also of the purpose for which the Goods are to be used; in which case a premium will be added to the price.

10.6 The Seller accepts no responsibility for the cleaning or sealing of the Goods.

10.7 Any example Goods shown to the Buyer are intended to indicate the general colour only and all agreements are entered into without guarantee by the Seller, either expressed or implied, that the Goods delivered will match the colour of the example Goods.

10.8 The Buyer acknowledges that variation and colour and texture are unavoidable due to differences in natural stone deposits and the Seller accepts no responsibility for colour variation, fading or discolouration which may occur for any reason whatsoever.

10.9 Tolerances

The buyer accepts that whilst processing Natural Stone, size and thickness tolerances apply as per following,

(a) Any Diamond Cut Sandstone surface + / - 3mm

(b) Any Diamond Cut Limestone surface + / - 3mm

(c) Any Quarry Cut Limestone surface + / - 10mm

Whilst every effort by the seller is made to achieve correct sizes, these tolerances must be allowed for.

11. Complaints

11.1 Where the Buyer is of the opinion that in the case of "First Grade" Goods, an amount in excess of 5% of any load are Imperfect Goods, then the Buyer should immediately notify the Seller and the Goods in question should be left at its place of delivery in order that a representative of the Seller can inspect the Goods.

11.2 If the Seller is of the opinion that, in the case of "First Grade" Goods, in excess 5% of any load are Imperfect Goods, then the Seller will replace the percentage of the delivery concerned which the Seller decides is in excess of the 5% referred to in clause 11.1.

11.3 Whilst every endeavour will be made to provide Goods of consistent colour, no guarantee is made that colours of individual Goods will match.

11.4 The Seller will not accept liability for:

(a) the removal or for any costs incurred by the Buyer associated with removing the Imperfect Goods replaced; and

(b) any consequential loss, damage or expense, which arises as a result of any defects in respect of the Goods the Seller agrees to replace; or

(c) any Goods that have been laid.

11.5 Any agreement by the Seller to replace a quantity of the Goods is not a ground to cancel the remainder of the Order.

12. Returns

12.1 The Seller will only consider returns in full pack form and in the same condition as which the Goods were delivered. Unless expressly set out in the Terms, the Seller is not obligated to accept a return of the Goods. A restocking fee of 20% of the cost of the Goods returned and cartage costs will apply to all returns accepted.

13. Over Supply

13.1 The Seller shall not be responsible for any over supply of Goods.

14. Force Majeure

14.1 The Seller shall not be liable for any failure to perform or for any delay in the performance of the contract due to strikes, plant or equipment failure, failure of supply of natural resources and other manufacturing ingredients, strikes, lockouts or any other labour difficulties, fire, explosion, flood, earthquake, war, government action or prohibition or any other cause or circumstance beyond its reasonable control.

15. Exclusion of Warranty

15.1 To the extent permitted by law and subject to any written warranty entered into between Seller and the Buyer with respect to Goods provided under the Terms the Terms exclude all other conditions, warranties, liabilities or representations in relation to the Goods. Where legislation implies in the Terms any condition or warranty that cannot be excluded or modified, the liability of the Seller for a breach of any such condition or warranty is limited at the Seller's option to any one or more of the following:

(a) replacement of the goods or the supply of equivalent Goods;

(b) payment of the cost of replacing the Goods or of acquiring equivalent Goods, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion; or

(c) repayment of any part of the purchase price of the Goods which has been paid by the Buyer, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion.

16. Limitation of Liability

16.1 Subject to clause 9, the Seller is not liable for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply of Goods, including without limitation any indirect or consequential loss, including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings, arising out of or in connection with the supply of the Goods even if due to the negligence of the Seller or any of its employees or agents.

17. Severance

17.1 If any provision of the Terms is unenforceable, illegal or void, that provision is severed and the other provisions of the Terms remain in force.

18. Amend Terms

18.1 The Seller may amend or vary the Terms by notifying the Buyer in writing of the amendment or variation.

19. Jurisdiction

The laws of Australia apply to these Terms and any account opened in the name of the Buyer.

The parties irrevocably submit to the jurisdiction of the appropriate court convenient to the Seller in respect of any claims, proceedings and matters arising out of or in respect of the Terms.

20. Definitions

In the Terms, the following words have the following meanings:

"Buyer" means the party other than the Seller identified in the Order Form;

"Delivery Date" means the delivery date stated in the Order Form;

"Goods" means the products to be sold by the Seller to the Buyer which are described in the Order Form;

"Order Form" means the form used by the Seller from time to time to sell its products, to which these Terms are attached;

"Order" means an offer to purchase the Goods described in the Order Form;

"Property" means the address contained in the Order Form;

"Seller" means Kimberley Sandstone ABN 29 643 677 482 - Brisbane Queensland.

"Terms of Trading Agreement" means the terms and conditions stated in the Seller's credit Application for a commercial credit account.