

# Quotation Terms and Conditions

DATED.....THE DAY OF.....,20.....

**BETWEEN:** **MJG Stone Pty Ltd T/A MJG Stone** having 629 017 287 and ABN 26 155 039 002 and having its registered address at 1 Anne Street, Southport, Queensland, 4215.

**AND:** **THE CLIENT** details of which are located on page 6 of this Application

## 1. Definitions

- 1.1 "Seller" shall mean MJG Stone Pty Ltd T/A MJG Stone its successors and assigns or any person acting on behalf of and with the authority of MJG Stone Pty Ltd T/A MJG Stone.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) named in this application or as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5 "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 of this contract.

## 2. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 3. Acceptance

- 3.1 Any instructions received by the Seller from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 3.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.6 The Client acknowledges that for the commencement of the Services the Client must supply the following:
  - 3.6.1 Signed acceptance of Seller's written quote and/or purchase order with all stone colour selections.
  - 3.6.2 Floor plan and elevations plans or cabinetmaking plans showing all items that require stone.
  - 3.6.3 Make and model of all sinks, hotplates, basins etc that require the Seller to do cut outs for.
- 3.7 The Client acknowledges that inspection of the natural granite, marble or similar, is required prior to commencement of the Services. Although all natural stone tops are pre-sealed offshore and on leaving the factory, the Seller suggests that the Client have the natural stone bench tops professionally sealed after installation.

## 4. Price and Payment

- 4.1 At the Seller's sole discretion, the Price shall be either:
  - 4.1.1 as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or

4.1.2 the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days. All quotes allow for one template and one install day. Anything outside this must be stipulated on the quote, otherwise a call back charge fee will be charged at the rate of \$150.00 per hour, calculated from the time the Seller leaves the factory to the time the Seller returns to the factory.

4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of the Seller will be detailed in writing and charged for on the basis of the Seller's hourly rate plus GST and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At the Seller's sole discretion, a deposit may be required and the Seller will advise the Client if they are required to pay a deposit.

4.4 The Seller may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.

4.5 At the Seller's sole discretion:

4.5.1 payment shall be due on delivery of the Goods; or

4.5.2 payment shall be due before delivery of the Goods; or

4.5.3 payment for approved Clients shall be made by instalments in accordance with the Seller's payment schedule; or

4.5.4 payment for approved Client's shall be due thirty (30) days following the date of the invoice.

4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then payment shall be due seven (7) days following the date of the invoice.

4.7 Payment must be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Seller.

4.8 GST and other taxes and duties that may be applicable must be added to the Price except when they are expressly included in the Price.

## 5. Delivery of Goods

5.1 At the Seller's sole discretion delivery of the Goods shall take place when:

5.1.1 the Client takes possession of the Goods at the Seller's address; or

5.1.2 the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or

5.1.3 the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.

5.2 At the Seller's sole discretion, the costs of delivery are:

5.2.1 included in the Price; or

5.2.2 in addition to the Price; or

5.2.3 for the Client's account.

5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.

5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

5.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:

5.6.1 such discrepancy in quantity shall not exceed five percent (5%); and

5.6.2 the Price shall be adjusted pro rata to the discrepancy.

5.7 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.8 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

6. **Risk**

- 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. 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 Seller shall supply a "Cleaning Maintenance Schedule" on installation of the Goods. The Seller shall not be held liable for damage, should the Client not comply with the Seller's recommendations.

7. **Title**

- 7.1 The Seller and Client agree that ownership of the Goods shall not pass until:
  - 7.1.1 the Client has paid the Seller all amounts owing for the particular Goods; and
  - 7.1.2 the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 7.2 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 or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
  - 7.3.1 where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and
  - 7.3.2 until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - 7.3.3 the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - 7.3.4 if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
  - 7.3.5 the Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Seller for the Goods, on trust for the Seller; and
  - 7.3.6 the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
  - 7.3.7 the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
  - 7.3.8 the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
  - 7.3.9 until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. **Personal Property Securities Act 2009 ("PPSA")**

- 8.1 In this clause the terms financing statement, financing change statement, security agreement, and security interest have the meanings defined by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Client. For the avoidance of any doubt, the Client agrees and acknowledges that the security interest created under this agreement is a Purchase Money Security Interest ("PMSI") as defined in the PPSA, in goods supplied and is a continuing and subsisting security interest attaching to all Goods now or in the future supplied to the Client by the Seller.
- 8.3 The Client undertakes to:
  - 8.3.1 Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to;
  - 8.3.2 Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - 8.3.3 Register any other document required to be registered by the PPSA; or
  - 8.3.4 Correct a defect in a statement referred to in clause 8.3.1, 8.3.2 or 8.3.3;
  - 8.3.5 Indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

- 8.3.6 Not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- 8.3.7 Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller;
- 8.3.8 Immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by the Seller pursuant to clause 8.3.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 9. Description and Specifications

- 9.1 Whilst every effort is made to ensure accuracy, all necessary items (e.g: sinks, tape ware, water purifiers, cook tops, basins etc) are required to be on site or a copy of the manufacturer's templates for measuring. Client and/or site supervisors are responsible to provide a template with the correct positioning of all items. If the Seller is not able to template 100% of the scope of works, then the Client will incur a call back fee of \$150.00 per hour and a delay in production time.
- 9.2 The Seller accepts no responsibility should the above fixtures or personal/private property be damaged or stolen from the site after measuring has been taken.
- 9.3 Once finalisations for all details and templated items are 100% complete for the scope of works in the quote/purchase order, a production time will be confirmed by the Seller's production team. Once in production no changes can be made. After all items have been made the Seller's productions team will confirm an installation date.
- 9.4 Installation of some natural stone or site conditions means that benchtops may have to be glued down to cabinets and cut outs done on site. This will cause a fine dust. The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the works and agrees that the Seller shall not be liable for any damage caused to those items through the Clients failure to comply with this clause.
- 9.5 The Client acknowledges that it is the responsibility of the Client to have all existing benchtops, sinks, basins, hotplates removed by licensed tradesmen. The Seller reserves the right to charge the Client for the delay of installation, should the Client not comply with this clause.
- 9.6 The Seller will "no more gap" the internal of all cabinets that need the stone tops to make them vermin proof, only, as required by the QBCC. Any other silicon or caulking is not the responsibility of the Seller.

## 10. Defects

- 10.1 The Client shall inspect the Goods on delivery and shall within two (2) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 10.2 Except as expressly set out in these terms and conditions and referred to at clause 10.1 herein, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.3 Goods will not be accepted for return other than in accordance with 10.1 above.

## 11. Warranty

- 11.1 Subject to the conditions of warranty set out in clause 11.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) 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.
- 11.2 The conditions applicable to the warranty given by clause 11.1 are:
- 11.2.1 the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- 11.2.1.1 failure on the part of the Client to properly maintain any Goods; or
- 11.2.1.2 failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or

- 11.2.1.3 any use of any Goods otherwise than for any application specified on a quote or order form; or
- 11.2.1.4 the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- 11.2.1.5 fair wear and tear, any accident or act of God.
- 11.2.2 the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- 11.2.3 in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

11.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. 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 the Goods.

## 12. Default & Consequences of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 If the Client defaults in payment of any invoice when due, the Client 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.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 12.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
  - 12.5.1 any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
  - 12.5.2 the Client 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
  - 12.5.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 13. Security and Charge

- 13.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
  - 13.1.1 where the Client and/or the Guarantor (if any) is the owner of land, realty or any other assets capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - 13.1.2 should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
  - 13.1.3 the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

## 14. Guarantee & Indemnity:

- 14.1 MJG Stone may require another individual or legal entity as Guarantor to guarantee the Customer's obligations, rights and debts under this Agreement.
- 14.2 Each party signing the Guarantee and Indemnity attached and under this Agreement:
  - 14.2.1.1 Confirms its request to MJG Stone to grant this Agreement;
  - 14.2.1.2 Agrees to be bound as a party to the Agreement; and
  - 14.2.1.3 Accepts and undertakes to all obligations of the Guarantor in the Agreement.
- 14.3 If there are two or more Guarantors, each Guarantor is liable for the obligations individually and together with each other Guarantor.

**15. Cancellation**

- 15.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

**16. Building and Construction Industry Payments Act 2004**

- 16.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

**17. General**

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 17.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.
- 17.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Client agrees that the Seller may review these terms and conditions at any time. 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 Client of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 17.9 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.