

Trade terms & conditions

1. Definitions

- a. Pacific Stone Pty Limited (and any of its subsidiaries) shall hereinafter be referred to as "Pacific Stone".
- b. The person, firm or company with whom Pacific Stone shall enter into a contract shall hereinafter be referred to as "the Customer".
- c. "Offer" shall mean the quotation or tender provided to the Customer by Pacific Stone together with these terms and conditions of contract.
- d. "Order" means an order for Products made in accordance with these terms and conditions.
- e. "Price" means the price to be paid by the Customer for the Products.
- f. "Products" means the products described and referred to in the Offer annexed to these terms and conditions, which has been provided by Pacific Stone to the Customer
- g. Acceptance of the Quote is acceptance of these terms & conditions.

2. General

- a. All correspondence regarding the Order must be in writing.
- b. These terms and conditions shall form part of and shall govern any contract entered into between Pacific Stone and the Customer, unless they are specifically modified or rescinded by Pacific Stone in writing prior to Pacific Stone's acceptance of the Order.
- c. In the event that there is any conflict between these terms and conditions and the Offer then these terms and conditions shall prevail to the extent of any inconsistency.
- d. Unless otherwise specified in writing an Offer is to remain open for 30 days from the date of delivery.
- e. Prior to receipt of an Order, Pacific Stone reserves the right to make any changes to the Offer as it considers necessary

3. Drawings

- a. The descriptions, illustrations and statements as to performance of the Products contained in catalogues, price lists and other advertising matter do not form part of the contract.
- b. Any working drawings, specifications and samples which are produced by Pacific Stone are merely representative of the Products, forms, dimensions and samples and descriptions of the Products. Pacific Stone shall be at liberty to make such variations to any working drawings, specifications or samples to complete the Products provided always that such variations shall not render the Products unfit for use.

4. Placement Of Orders

- a. If any dispute arises over an Order, Pacific Stone's records will be conclusive evidence of what was ordered.
- b. On the placement of each Order, the Customer represents to Pacific Stone that it is solvent and able to pay all of its debts as and when they fall due.
- c. In addition to the Customer's obligations on completion of any credit application which Pacific Stone may require, the Customer shall inform Pacific Stone when an Order is placed, of any material facts, which might reasonably affect any decision to accept the Order or grant credit.

5. Instructions/Specifications

- a. The Customer acknowledges that, where identified on the Offer, the Products are to be manufactured to the Customer's specifications. Accordingly, the Customer shall, as soon as an Order has been placed, provide Pacific Stone with sufficient details and instructions in writing to enable Pacific Stone to commence work. Any additional costs or expenses incurred by Pacific Stone as a result of the Customer's delay in this regard may be added to the Price by Pacific Stone.
- b. Where specifications, drawings or other particulars are supplied by the Customer, Pacific Stone's Offer is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Customer on which Pacific Stone has based an Offer, then Pacific Stone is entitled to revise the Price in accordance with the additional work required to complete the Products.

6. Products

- a. All Products to be supplied by Pacific Stone to the Customer are as described on the Offer and the description on such Offer prevails over all other descriptions including any specification or enquiry of the Customer.

7. Defects

- a. If the Customer believes that any Product which is delivered does not correspond with the Customer's Order in terms of type, quantity, variety or otherwise, the Customer must notify Pacific Stone within seven (7) days of delivery.
- b. 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 Pacific Stone pursuant to clause 8(a), the Customer is deemed to accept the Product and loses all rights it would otherwise have against Pacific Stone in respect of the matters referred to in clause 8(a).
- c. Should the Products be damaged by other tradespeople or third parties after being delivered, Pacific Stone will not be liable for any rectification / replacement of the Products.
- d. Pacific Stone shall not be liable to compensate the Customer for any delay not caused by Pacific Stone in either replacing or remedying the workmanship or in properly assessing the Customer's claim under these warranties.
- e. The Customer is responsible for all costs associated with claiming under the warranties set out in this clause 8 unless Pacific Stone agrees otherwise in its sole discretion.

8. Exclusions

- a. No dealing between Pacific Stone and the Customer shall be or be deemed to be a sale by sample.
- b. Subject to terms implied by law and not capable of exclusion, Pacific Stone does not warrant the fitness for the Customer's purpose of any Product.
- c. The Customer will rely on its own knowledge and expertise in selecting any Product and as to the suitability and fitness for any required purpose of any Product.
- d. The Customer acknowledges that Pacific Stone has not made any warranty, guarantee or representation in relation to the Products on which the Customer has relied (including as to the fitness of the Products or any part of the Products for a particular purpose), apart from those which it has expressly received in writing from Pacific Stone, or those required by law.
- e. Unless otherwise required by law, any warranty provided by Pacific Stone will be for a period of 12 months in relation to any Product and both Pacific Stone and the Customer agree that a period of 12 months from the date of supply or dispatch of the Product is a reasonable warranty period.
- f. Any costs for vertical movements required to install the Product are the responsibility of the Customer. Pacific Stone will endeavor to install the Products however if Pacific Stone have to walk upstairs, Pacific Stone will hold the right to charge for additional resources required at \$125 per hour to help carry upstairs. If access for Pacific Stone is limited to stairs which are not safe, Pacific Stone holds the right to book a mobile crane to lift the benches and the Customer will bear these additional costs.
- g. If Pacific Stone believes that the substrate is not suitable and not adequate e.g. non-moisture resistant, out of level, insufficient support across open spans, hot plate and sink cabinets then Pacific Stone reserves the right to not provide warranty for the installed Products or refuse to install the Products. If the Customer fails to rectify the insufficient substrate, then Pacific Stone holds the right to rectify substrate which may include additional charges to the Customer.

The Customer acknowledges that:**Reconstituted Stone**

- h. Pacific Stone does not warrant the product when used in an outdoor environment. If reconstituted stone is used in an outdoor environment, Pacific Stone will not be liable for any defects or warranty claims regarding the product unless it is specifically designed to be installed outdoors;
- i. Pacific Stone will not warrant a stone kitchen splash back which is closer than 220mm from the edge of the closest burner frame. It is the Customer's responsibility to ensure an adequate cook top choice or clearance is in accordance with AS/NZS 5601;
- j. Pacific Stone excludes liability for when the "L" shape bench top is required without a joint at the corner of the intersecting angle due to various mechanical stresses experienced by the Product after installations, this includes stone going into window reveals;
- k. man-made or reconstituted stones have varying characteristics, durability and colour variations. Pacific Stone has no responsibility or liability to the customer for any such variations and/or defects within the Product such as blotches, batching, pigment, high/low spots, black / white spots, and irregular distribution of quartz granites. Pacific Stone will endeavour to inspect the Customer's selected material however if the Customer wishes to inspect prior to manufacture Pacific Stone suggests and invites the Customer to do so;
- l. Pacific Stone does not warrant the engineered stone, the material is warranted by the manufacturer / supplier. While most stone material is covered by a limited 10-year warranty, the Customer is required to register the material warranty via the relevant manufacturer's website;
- m. Pacific Stone are not liable in any instance for any cracks to man-made / engineered stone which do not occur during installation. These cracks may have occurred from thermal shock by placing hot pots directly onto the surface;
- n. Pacific Stone provides no warranty for any damage caused by the Product not being cleaned in accordance with the supplier's and manufacturer's guidelines and recommendations;
- o. Pacific Stone's warranty does not cover defects or damage to the Product which are a result of mishandling or misuse by the Customer or a third party;
- p. Pacific Stone provides no warranty for the Product becoming defective or damaged as a result of cleaning or using other products which contain trichloroethane or methylene chloride (such as paint stripper) or cleaning agents which have high alkaline/pH levels;
- q. Pacific Stone provides no warranty for the discoloration of the Product or any part of the Product if it is exposed to direct sunlight or silicon (or similar);
- r. Pacific Stone provides no warranty for damage arising from sitting, climbing or standing on the Product;
- s. Pacific Stone provides no warranty for chipping. Chipping is normally a direct result of impact to the edge of the surface;
- t. Pacific Stone provides no warranties for fireplaces given the variations in design and heat output; and
- u. Pacific Stone provides no warranty for dissatisfaction with the appearance of joints or seams, or of any adhesive, caulking materials or damage due to other items being installed.

Natural Stone / Terrazzo

- v. The Customer accepts that natural stone, granite marble or other similar goods may have naturally occurring variations in colour, grain, structure, and veining.
- w. The Customer accepts natural stone, granite, marble or similar goods may have small holes, pit marks, natural fissures, and crystals and accepts that these or other imperfections are naturally founded;
- x. The Customer is aware that if the Customer does not inspect the natural stone, granite, marble or other similar goods in accordance with this clause herein, the Customer is deemed to have waived their right of inspection and cannot seek relief under these terms and conditions or at law for any imperfections, natural or otherwise.
- y. The Customer is aware that the grains and veining of natural stones may change or expand due to structural movement, thermal expansion and other contributing factors for which Pacific Stone bears no responsibility for.
- z. The Customer acknowledges that natural stone does not come with a warranty of the Product.

9. Continuity

This contract contemplates that the whole of the work required to complete the Products, or each major section thereof, shall be capable of being completed and delivered by Pacific Stone in one continuous operation. Pacific Stone will undertake all reasonable efforts to deliver the Products in this manner. Any additional expense incurred by Pacific Stone as a result of Pacific Stone being unable to complete or deliver the whole of the Products or each major section of the Products in one part or delivery may be added to the Price by Pacific Stone.

10. Payment Terms

- a. A deposit of 50% shall be paid upon Order, unless otherwise agreed to in writing by Pacific Stone.
- b. Once the works are completed, the remainder 50% will be paid within 7 days, unless otherwise agreed to in writing by Pacific Stone.
- c. Any part of the Price which is not paid by the Customer on the due date shall bear interest at the rate of [8%] per annum (which may be waived by Pacific Stone in its discretion).
- d. Payment may be requested on materials or equipment which are specially ordered in for the Customer. These materials or equipment may be stored on site or at some other location agreed upon by the parties in writing. The Customer will be notified in advance of any additional storage costs to be added to its Order.

11. Part Invoice

- a. Where required by Pacific Stone and identified in the Offer, part invoices (or invoices for any portion of the work or for part only of the Price) may be delivered by Pacific Stone and payments are then required to be made by the Customer within seven (7) days of the part invoice being delivered in writing by Pacific Stone.
- b. Any failure by the Customer to comply with the terms of any part invoice shall be construed as a breach of contract on the part of the Customer and shall entitle Pacific Stone to cease all works forthwith until the payment is made or any other breach rectified.
- c. Pacific Stone shall not have any liability to the Customer whatsoever arising from the cessation of work for failure to pay any part invoice.

12. Set-Off

- a. The Customer shall pay all amounts due without any deductions or withholding except as required by law, and the Customer shall not be entitled to assert any credit, set-off or counter-claim against Pacific Stone in order to satisfy withholding payment of any such amount in whole or in part. Pacific Stone may, at its sole discretion, set-off any amount owed to it by the Customer against any amount payable by Pacific Stone to the Customer

13. Shortage

The Customer waives any claim for shortage of any Products delivered if a claim in respect of short delivery has not been lodged with Pacific Stone within seven (7) days from the date of receipt of the Products by the Customer.

14. Prices

- a. Where any Price stated by Pacific Stone in the Offer includes any external costs (such as freight and insurance), those are provided by Pacific Stone on the date the Offer is made.
- b. In the event that there is a significant variation in the cost of materials, labour, external costs or other matters (in excess of 5% of that component of the Offer) then Pacific Stone may vary the Price set out in the Offer after notifying the Customer and the Customer accepting the updated Offer. Once accepted and invoiced, the Customer shall pay the revised Price.
- c. The Price may be revised by Pacific Stone at any time prior to supply or dispatch of the Product.

15. Working Hours

This Offer is made in contemplation that Pacific Stone shall execute its work during normal working hours from 7am to 5pm in a five (5) day week, excluding Australian public holidays. Pacific Stone may, at its sole discretion, elect to accept or decline any Offer which may (as a result of the Offer or Pacific Stone's other commitments) require it to work outside of normal working hours. Any additional costs resulting from the Customer's direction to work extraneous hours in lieu of the normal working hours in order to supply the Products may be added to the Price by Pacific Stone.

16. Sub-Contracting

Pacific Stone shall be at liberty to sub-contract to third parties such parts of the work required to complete the Product as it may, in its absolute discretion, think fit, without reference to the Customer. Pacific Stone will provide the name of such third party sub-contractors to the Customer if requested.

17. Release & Indemnity

Save as provided in these terms and conditions and at law, the Customer hereby releases Pacific Stone from all liability and indemnifies Pacific Stone in respect of any claim, action or suit for loss or damage (including consequential loss or damage) by reason of delay, faulty or defective materials or workmanship or any act of negligence or omission by Pacific Stone its employees or agents.

18. Limitation Of Liability

Pacific Stone's liability for a breach of this contract, including for a breach of a condition or warranty implied by Pt 3-2 Div. 1 of the Australian Consumer Law, is limited to:

- a. In the case of Products, any one or more of the following:
 - i. the replacement of the Products or the supply of equivalent Products;
 - ii. the repair of the Products;
 - iii. the payment of the cost of replacing the Products or of acquiring equivalent Products;
 - iv. the payment of the cost of having the Products repaired; or;
- b. In the case of services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.
 - iii. at Pacific Stone's sole discretion.
- c. Pacific Stone's liability under section 274 of the Australian Consumer Law is expressly limited to a liability to pay to the Customer an amount equal to:
 - i. the cost of replacing the Products;
 - ii. the cost of obtaining equivalent Products; or
 - iii. the cost of having the Products required, whichever is the lesser amount

19. General Exclusion Of Liability

- a. Pacific Stone is not liable for any prospective profits, or special indirect or consequential damages, or any general loss or damage, or for any expense resulting from use by the Customer or others of defective goods.
- b. Pacific Stone's liability includes replacement delivery charges. Prior authority for the return of Products is required by Pacific Stone. The Customer must contact Pacific Stone either by telephone or email for this approval.

20. Warranties

- a. This clause 23 outlines how Pacific Stone warrants its Products purchased after 1 January 2011.
- b. Australian Consumer Law (ACL) protects consumers by giving them certain rights relating to the purchase of goods and services. Pacific Stone complies with these protections.
- c. If you are a 'consumer' as the term is defined in the ACL:
 - i. Our goods come within guarantees that cannot be excluded under the ACL;
 - ii. You are entitled to a replacement or refund for major failure and for compensation for other reasonably foreseeable loss or damage;
 - iii. You are 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.

21. Delivery

- a. Any delivery times provided by Pacific Stone to the Customer are estimates only and are not of the essence.
- b. Pacific Stone is not liable for any loss to the Customer (or other parties) resulting from late delivery or non-delivery where prior notice is provided.
- c. Pacific Stone may at its option deliver the Products to the Customer in any number of instalments unless otherwise agreed in writing with the Customer.
- d. If Pacific Stone delivers any of the Products by instalments, and any one of those instalments is defective for any reason:
 - i. it is not a repudiation of the contract; and
 - ii. the defective instalment is a severable breach that gives rise only to a claim for compensation

22. Title And Risk

- a. Title in the Products shall not pass until payment in full of the Price (and all monies owed on any basis) is made by the Customer.
- b. Risk in the Products shall pass to the Customer upon delivery to the Customer.
- c. The Customer shall be responsible for any loss or damage caused by the Customer to any property of Pacific Stone (including in the Products if title has not passed) situated on the Customer's premises.
- d. If the Products are used to make new goods, then the new goods will be held in trust for Pacific Stone until paid for in full by the Customer.
- e. If the Products are resold, or further products manufactured using the Products are sold by the Customer, the Customer shall hold such part of the proceeds of any sale as represents the Price of the Products sold or used in the manufacture of the further Products sold in a separate identifiable account as the beneficial property of Pacific Stone and shall pay such amount to Pacific Stone upon request.
- f. Notwithstanding any provision above, Pacific Stone shall be entitled to maintain an action against the Customer for payment of the Price.

23. Personal Property Securities

- a. All terms capitalised in this clause 27 have the same meaning given to them under the Personal Property Securities Act 2009 (Cth) ("PPSA 2009"). The parties agree that for the purposes of PPSA 2009 any agreement for the supply of Products shall constitute a security agreement to secure payment of the Price and all of the Customer's outstanding debts and obligations to Pacific Stone from time to time and this Security Interest shall continue until all of the Customer's debts and obligations under this agreement are discharged.
- b. Pacific Stone will have a Purchase Money Security Interest ("PMSI") in all Products supplied in accordance with these terms and conditions and Pacific Stone's PMSI shall extend to the Proceeds (including any Accounts) and Accessions.
- c. The Customer agrees to do all things necessary, including providing all relevant information necessary to register a Financing Statement or a Financing Changes Statement as a Security Interest in the Customer's personal property, (and, if applicable, a Purchase Money Security Interest) on the Personal Property Securities Register ("PPSR").
- d. The Customer will take all steps necessary to better secure any Collateral which secures or is intended to secure the supply of Products pursuant to those terms and conditions immediately and at the Customer's own cost.
- e. The Customer must pay Pacific Stone's costs of any discharge or amendment of any Financing Statement or Financing Change Statement.
- f. The Customer agrees that Pacific Stone may take whatever action is appropriate to ensure that Pacific Stone has first ranking priority in the Collateral and will indemnify Pacific Stone for any costs.
- g. The Customer agrees that where Pacific Stone has any rights in addition to those conferred by Ch 4 of the PPSA 2009, those rights continue to apply.
- h. Within two (2) business days of Pacific Stone's written request the Customer will provide to Pacific Stone copies of all documents granting Security Interests registered over its personal property and any Security Interests perfected by Possession or Control within the meaning of PPSA 2009.
- i. The Customer authorises Pacific Stone (as its agent) to request any information under s275 of PPSA 2009 from any Secured Party relating to any Security Interest.
- j. The Customer will give Pacific Stone not less than seven (7) days prior written notice of any proposed change in its name, address, email address, facsimile number, ACN or ABN, company registration or any other details required for requisition on the PPSR.
- k. If the Customer commingles the Products with other property Pacific Stone will have a Security Interest in any Processed and Commingled goods.
- l. The Customer acknowledges that the Products are not intended, and shall not be used, for personal, household or domestic use.
- m. The Customer agrees that, to the maximum extent permitted by law, sections 130, 142 and 143 of PPSA 2009 will not apply to any Security Interest.
- n. The Customer agrees, to the maximum extent permitted by law, to waive the right to do any of the following and to contract out of those sections of the PPSA 2009:
- Request a statement of account under s132(4) if there is no disposal of the Products
 - Give notice objecting to Pacific Stone's proposal to retain or dispose of any of the Products under s137
 - Receive notice of removal of an Accession [refuse permission to remove an Accession] or such damages relating to the removal of an Accession
 - Receive a verification statement or notice in relation to any Financing Statement or Financing Change Statement in respect to the Security Interest created pursuant to these terms and conditions
 - Receive a notice from Pacific Stone under s118, 121, 129 or 130
 - Receive a notice from Pacific Stone of seizure of Goods under s123
 - Receive a statement of account showing the amounts paid to the other secured parties after disposal of the Products under s132
 - Receive a notice of retention of the Products under ss134 and s135

24. Customer's Insolvency

If the Customer commits (or if Pacific Stone considers, on reasonable grounds, that the Customer is at risk of committing) an act of bankruptcy, enters into a scheme of arrangement or composition with creditors, suffers a sequestration order or, being a company, takes or has taken against it any action or proceedings which may result in the winding up of the company or is placed under official management or receivership, then Pacific Stone may:

- terminate the contract on the giving of 24 hours' notice to the Customer and in accordance with clause 35;
- exercise its rights pursuant to clause 26

25. Force Majeure

In the event of circumstances beyond Pacific Stone's control, such as an event of God; natural disasters; global pandemics; Pacific Stone's performance is delayed or impeded, Pacific Stone may cease or suspend work on the Products (at its absolute discretion) provided always that the Customer shall pay any part invoice and shall pay all charges and expenses incurred and moneys paid by Pacific Stone in respect thereof.

26. Returned Goods

- Pacific Stone is not under any duty to accept Products returned by the Customer and will do so only on terms to be agreed in writing in each individual case.
- Pacific Stone agrees to accept returned Products from the Customer under clause 33(a) above, the Customer must return the Products to Pacific Stone at its place of business referred to in the Order and the Customer shall bear the cost of transit (if any) for the return of the Products to Pacific Stone.

27. Cancellation

No Order may be cancelled except with consent in writing and on terms, which will indemnify Pacific Stone against all losses resulting from such cancellation.

28. Termination

- If the Customer shall default in any of its obligations under this contract, Pacific Stone shall have the right to terminate this contract immediately upon the provision of written notice to the Customer.
- To the extent permitted by law, upon termination of the contract prior to payment of the Price in full:
 - all amounts due under the contract become payable forthwith;
 - Pacific Stone shall be at liberty to retake possession of the Products in respect of which property has not passed and, if necessary, to enter onto the property of the Customer in order to execute that right, in accordance with clause 26.

29. No Waiver

No relaxation by Pacific Stone of the Customers obligations under this contract shall be regarded as a waiver of Pacific Stone's right to enforce those obligations on a subsequent occasion.

30. Applicable Law

This contract shall be construed according to the laws of the State of Australian Capital Territory and the parties submit to the jurisdiction of the Courts of Australian Capital Territory.