

DISTINCTIVE STONE

TERMS AND CONDITIONS for Distinctive Stone, a business of Constantin Cross Pty., Ltd.
Version 1-R6 - 30th June 2018

1. INTRODUCTION

1.1 Application of these terms and conditions

The Customer agrees that prior to placing an order with the Supplier, the Customer read and agreed to these terms and conditions and that these terms and conditions apply to all Goods supplied by the Supplier to the Customer whether or not a quote has been given by the Supplier to the Customer and to the exclusion of any terms or conditions appearing on any document of the Customer. For the purposes of these terms and conditions ("terms and conditions"):

"Customer" means:

- i. The applicant named on an account with the Supplier for the supply of Goods; or
- ii. Where no account exists, the person or entity named on a quotation or invoice provided by the Supplier to the purchaser of Goods; or
- iii. The person or entity named as the Customer on a Work Authorisation or Order for Goods provided by or to the Supplier.

"goods" means goods or services or goods and services.

"order" means a purchase order or order form from the Customer to the Supplier.

"services" means installation of goods and all services related to the installation of goods

"Supplier" means – Any one or more of Distinctive Stone Pty Ltd (ABN 84 798 342 942), Constantin Cross Pty Ltd (ACN 168 640 971), and each of their subsidiaries, divisions, affiliates and "associated entities", "related entities" and "related bodies corporate" within the meaning of the Corporations Act 2001 (CW) and any other firm or company nominated by the Supplier in writing to the Customer as an associated entity of any of the above named corporate entities

2. QUOTATIONS

2.1 Where the Supplier has given the Customer a quote ("quote"):

2.1.1 The Customer shall accept the quote in writing by signing the acceptance of the quote or by giving to the Supplier an order which specifically refers to the Supplier's quote number.

2.1.2 Quotes issued by the Supplier are valid for 60 days only from the date of the quote, or until notified.

2.1.3 In accepting a quote the Customer warrants and acknowledges that it has not relied on any representation by the Supplier and its employees and agents other than as set out in writing in the quote.

2.1.4 The Supplier reserves the right to withdraw the quote for any reason.

2.2 A quote applies only to the scope of the goods to be provided by the Supplier pursuant to a quote.

2.3 Jobs are quoted with the amount of information provided by the client at the time of enquiry. Any aspect of the job other than material and manufacture is to be covered by the client and will be charged accordingly if not allowed for on the quote (ie: parking fees, inductions, extra lifting team if access is difficult...). As soon as the variance is identified by Distinctive Stone, the extra charge amount will be communicated to the client and will be applied to the final invoice. Distinctive Stone can not be responsible for not allowing for a variance that was not communicated at the time of quoting.

2.4 Unless stated by the customer at the time of quoting, difficult access can only be assessed at time of template. Costs related to changes in layout and/or extra lifting team required to undergo stone installation are at customer's expense, and will be applied to final invoice.

2.5 Indemnity

2.5.1 The Customer warrants as a fundamental condition of this contract that all drawings and specifications and other design information supplied by the Customer to the Supplier shall be accurate in all respects.

2.5.2 The Customer shall indemnify the Supplier against all costs incurred when goods are manufactured exclusively to the Customer's specification. The supply of such goods cannot be cancelled by the Customer.

3. PRICE

3.1 Unless there is a binding accepted quote or it is otherwise agreed in writing between the Supplier and the Customer, the price of the goods shall be the Supplier's list price of the goods plus delivery at the date of order.

3.2 The Supplier reserves the right to alter its list prices without notice to the Customer and may vary the purchase price including a quoted price as a result of any one or more of the following:

3.2.1 Change in material price list/availability

3.2.2 A Customer changing an order after materials have been ordered or production has been commenced.

3.2.3 Failure of the Customer to accept delivery of the goods on a scheduled delivery date.

3.2.4 The delivery requirements being beyond the scope referred to in a quote or in the Customer's order.

3.2.5 The goods being delivered in installments or in more than one delivery.

3.2.6 Delays or complications in delivery of goods due to difficult access to the premises, misrepresentations made to the Supplier regarding access and description of the premises or any failure to provide the Supplier with particulars regarding access to and nature of the premises.

3.2.7 Any changes imposed by a third party in connection with the installation and delivery of the Goods.

3.2.8 Any increase in taxes or duties or government levies incurred or to be incurred by the Supplier after the date of the Order.

3.2.9 Any costs of transportation, postage, packaging, taxes, insurances or the need for the supply or use of equipment such as cranes and forklifts that may be required as part of the delivery or installation process and which were not contemplated by the Supplier at the time of preparing a quote or receiving an Order.

3.2.10 If any alterations, cutouts and tap hole locations are not clearly marked on templates and the Supplier is required to return to the job for that reason.

3.3 All quoted and list prices are exclusive of GST and other government imposts unless otherwise stated in writing and are subject to alteration without notice.

4. PAYMENT

4.1 Upon placement of an order the Customer is required to pay a deposit of 50% of the total price. For orders over \$10k before GST, a 50% deposit upfront is required, customer being on account or not.

4.2 If the deposit has been paid and the order is subsequently cancelled by the Customer (for any reason whatsoever) the Customer will not be entitled to a refund of the deposit or any part thereof where goods to fulfill the order have been purchased and/or where the production process has commenced. A certificate signed by an officer or senior employee of the Supplier to the effect that such goods have been purchased and/or the production process has commenced shall be conclusive evidence of that fact or those facts. In all other cases, the deposit less an administration fee of 10% of the deposit will be refunded.

4.3 In the case of delivery of goods (without installation) the due date for payment of the balance of purchase price is the date of delivery and in the case of delivery of goods (with installation) the due date for payment is the date certified by an officer or employee of the Supplier that installation of the goods has been completed.

4.4 For the purposes of determining the due date for delivery the Customer acknowledges and agrees that it shall be deemed to have accepted delivery immediately once the Supplier notifies the Customer that any goods are ready for collection or they are placed with a carrier or delivered to the Customer's business premises or site, whether attended or not and, a certificate signed by an officer or employee of the Supplier confirming delivery shall be conclusive evidence of delivery, as shall any signed delivery docket.

4.5 Payment of the deposit and the balance of the purchase price shall be made by cash, credit card, electronic funds transfer (EFT) or bank cheque unless otherwise agreed in writing by the Supplier.

4.6 Any amount which remains outstanding after the due date will bear interest payable by the Customer to the Supplier at the rate of 5% with such interest to be compounded on a daily basis.

4.7 If a job in progress constituted of several areas is delayed for any reason by the customer or their trades, Distinctive Stone reserves the right to invoice the part of the job which has been completed as normal and re-issue an invoice for the remaining part of the job.

5. DELIVERY

The Customer acknowledges and agrees as follows:

5.1 The Supplier accepts no duty or responsibility for delivery of goods to the Customer but may elect to arrange delivery at its discretion without any liability and at the Customer's cost and responsibility in all things.

5.2 In the event that arrangements are made between the Supplier and the Customer for delivery to the Customer all costs associated with such delivery are at the Customer's expense and responsibility.

5.3 The Supplier reserves the right to charge for any costs associated with delivery and such charges may be reflected in the price of goods quoted and/or added as additional charges.

5.4 In places where Distinctive Stone workers can not park their vehicle for the entire duration of their jobs on site, a safe and legal area MUST be provided by the client for them to park in order to unload the stone and tools necessary to the completion of their job.

5.5 The Supplier will not be responsible for any damages or loss incurred by the Customer as a result of delay in delivery of the goods.

5.6 Where goods are not delivered due to an error in delivery address provided by the Customer, any additional costs of the Supplier are to be borne by the Customer.

5.7 The Customer is deemed to have accepted delivery of the goods at the time the Supplier notifies the Customer that the goods are ready for collection, or where a delivery service is engaged for delivery, when delivered to the Customer's site (whether the customer is on site or not).

5.8 The Customer is liable for any damages and claims arising out of delivery of the goods, including damage to footpaths, streetscapes or any other property and including fines and/or penalties from local authorities for rectification works in relation to any such damage or claim.

5.9 The Customer must inspect the goods upon delivery and within one (1) day of delivery advise the Supplier of:

- 5.10.1 Any alleged difference in the quality or quantity of Goods supplied compared to the goods ordered, and
5.10.2 Any goods that are allegedly defective, and must allow the Supplier a reasonable time to inspect any such goods.
5.10.3 Should the Customer fail to comply with any of these provisions for delivery, the goods are taken to be supplied and delivered as ordered and otherwise in accordance with these terms and conditions.

6. PRODUCTS AND SERVICES

6.1 The Supplier disclaims any responsibility or liability relating to any goods:

- 6.1.1 Made or performed to designs, drawings, specifications and/or procedures or with materials which are provided or approved in part or in full by or on behalf of the Customer;
6.1.2 Utilised, stored, handled or maintained incorrectly or inappropriately.
6.2 The Customer agrees to check all goods for compliance with all applicable industry standards and regulations or standards of regulatory bodies before use, and to use or apply the same in compliance with such standards or regulations and in accordance with the Supplier's and all manufacturers recommendations and directions as well as with good commercial and industrial practice.
6.3 Due to variations in colour, grain, quality, strength, structure, graining, veining and texture of natural stones such as marble, granite and lime stone used in manufacture of the goods no warranty, condition or guarantee is given by the Supplier that any goods shall correspond (in glaze, colour, texture, appearance, blend, strength, quality, grain, veining, structure or otherwise) with any sample, display or any previous goods sold or displayed or any other batch of similarly described goods, and the Supplier shall not be liable for any such variations in goods so supplied.
6.3.1 If more stone is required during the process (manufacture to installation) due to natural idiosyncrasies, this will be at the customer's expense.
6.3.2 Please note natural products can come with characteristics (both positive and negative) which are not unveiled until cut. Distinctive Stone can not be held responsible for the characteristics of the natural material picked by the client
6.4 The Supplier shall not be liable for any claim, loss or expense on any basis, which may be sustained or incurred by any person by reason of any alleged variation between the goods delivered and the goods ordered.
6.5 No sale of goods between the Supplier and the Customer is to be taken as a sale by sample.
6.6 The Customer shall check the goods prior to installation and satisfy itself as to the matching of colour, grain, quality, strength, structure and veining.
6.7 The Customer warrants that any specifications, drawings, designs or other directions given to the Supplier in relation to the supply of the goods are accurate in all respects and indemnifies the Supplier in relation to all costs for manufacture and supply of the goods in accordance with any such specifications, drawings, designs or other directions and acknowledges that any such manufacture and supply of goods cannot be cancelled.
6.8 In the event that the goods are not to be installed or fitted by the Supplier, the Supplier recommends the use of experienced tradesmen in laying and fitting tiles and bench tops or other similar goods so as to avoid damage to the surface of any such goods. The Supplier takes no responsibility for loss and damage caused due to incorrect fitting or installation of goods.
6.9 The Customer acknowledges that ceramics/ porcelain are not guaranteed against cracking, chipping or breaking and that the Supplier shall not be liable to the Customer for any loss or damage resulting if ceramic/ porcelain crack, chip or break.
6.10 The Customer agrees that the Supplier will not be liable for any delay in or supply or availability of any goods.
6.11 The Customer acknowledges that no warranty, condition, description or representation either expressed or implied exists in relation to the goods supplied by the Supplier and that to the extent permitted by law all warranties, terms and conditions in relation to the sale, quality or fitness of the goods and of every other kind, whether implied by use, statute or otherwise are hereby excluded.
6.12 To the extent permitted by law, the Customer acknowledges and agrees that the Supplier shall not be liable for physical or financial injury, loss or damages, or for consequential loss or damage of any kind arising out of the supply and installation of the goods or arising out of the Supplier's negligence or in any way whatsoever.
6.13 The Supplier's liability for breaching a condition or warranty implied by Division 2 of Part 5 of the Trade Practices Act 1974 (other than Section 69) is hereby limited to:
6.13.1 In the case of goods any one or more of the following:
6.13.1.1 The replacement of the goods to the supply of equivalent Goods.
6.13.1.2 The repair of the goods.
6.13.1.3 The payment of the cost of replacing the goods or of acquiring equivalent goods.
6.13.1.4 The payment of the cost of having the goods repaired; or
6.13.2 In the case of services
6.13.2.1 The supplying of the services again; or
6.13.2.2 The payment of the cost of having the services supplied again.
6.14 The Supplier's liability under Section 74 of the Trade Practices Act 1974 is expressly limited to liability to pay to the Customer the amount equal to:
6.14.1 The cost of replacing the goods; or
6.14.2 The cost of obtaining equivalent goods; or
6.14.3 The cost of having the goods repaired, whichever is the lowest amount.
6.15 Where an engineered (i.e. reconstituted) stone (e.g. CaesarStone, EssaStone, Quantum Quartz) is supplied the relevant manufacturer's warranty will apply. A copy of the manufacturer's warranty can be supplied upon request.

7. SAFETY

- 7.1 The cutting and working of stone can create dust. Where such cutting and working is to be performed on site, the Supplier will take all reasonable precautions to minimize the creation of dust.
7.2 It is the sole responsibility of the Customer to cover all furniture, equipment and appliances with sufficient protective covering to protect such furniture, equipment and appliances from the effect of dust and to ensure that all persons are sufficiently removed from the site of such works whilst the works are being carried out.
7.3 Steel Cap safety work boots are required at all times. The Customer is to supply suitable floor covering to protect any floor from boots and potential stone drop or fall.

8. CARE & MAINTENANCE

The Supplier does not recommend that marble be used on kitchen surfaces, as marble in comparison to granite is more porous and a softer stone. A copy of the Distinctive Stone Care & Maintenance guide can be obtained on the web site: www.dstone.com.au.
For all engineered (reconstituted) stone the Customer is referred to the manufacturers Care & Maintenance guides or like publications.

9. RISK

The risk in the goods shall pass to the Customer upon delivery and/or installation of the goods, to the customer or its agent or to a third party nominated by the Customer.

10. RETENTION OF TITLE

- 10.1 The Customer acknowledges and agrees that Property of the goods shall not pass to the Customer until payment in full (full payment) of all monies owed on any basis by the Customer to the Supplier.
10.2 The Customer acknowledges that from the date of delivery it is in possession of the goods solely as bailee for the Supplier until such time as full payment has been made to the Supplier. The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any such goods from the Customer and sell or dispose of them, and the Supplier shall not be liable to the Customer or any person claiming through the Customer and the Supplier shall be entitled to retain the proceeds of any goods sold and apply same towards the Customer's indebtedness to the Supplier.
10.3 If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may, without prejudice to any other remedies it may have, repossess any goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.
10.4 Upon any sale or disposition of any goods by the Customer prior to full payment, the Customer agrees to deposit all proceeds of sale in a separate bank account, agrees not to mix such proceeds with any other monies and agrees to hold all such proceeds in trust for the Supplier and to forthwith account to the Supplier for such monies, even if the Supplier may have granted any credit facility and/or time to pay to the Customer.
10.5 Until full payment the Customer agrees:
10.5.1 To keep all goods as bailee for the Supplier and to store them in a manner which shows the Supplier as owner;
10.5.2 Only to sell the goods in the usual course of its business;
10.5.3 That a sale on terms, at cost or for less than cost shall not be "in the usual course".
10.6 The Customer agrees that a certificate purporting to be signed by an officer of the Supplier identifying goods shall be conclusive evidence of the Supplier's title thereto.
10.7 If the Customer uses any goods in any construction or project "project", the Customer agrees to hold such part of the proceeds of sale or disposition of the project which equals the value of the products used in the project (and until payment, that part of the book debt commensurate thereto) upon trust for the Supplier until payment in full for those Goods and all monies owed to the Supplier by the Customer.
10.8 This Clause 10 shall be read down to the extent necessary to avoid creating a charge.

11. LIABILITY

- 11.1 Non-Excludable Rights – The parties acknowledge that under applicable State and Commonwealth law, certain conditions and warranties may be implied in these terms and conditions, and there are rights and remedies conferred on the Customer in relation to the provision of the goods which cannot be excluded, restricted or modified by agreement (Non-Excludable Rights).
11.2 Disclaimer of Liability – The Supplier disclaims all conditions and warranties expressed or implied and all rights and remedies conferred on the customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranty and all those rights and remedies are excluded other than any Non-Excludable Rights. To the extent permitted by law, the liability of the Supplier for a breach on a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the goods and/or any services again or payment of the cost of having the goods and/or services supplied again.
11.3 Indirect Losses – Notwithstanding any other provisions of terms and condition, the Supplier is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- 11.3.1 Any increased cost or expenses;
- 11.3.2 Any loss of profit, revenue, business, contracts or anticipated savings;
- 11.3.3 Any loss or expense resulting from a claim by a third party; or
- 11.3.4 Any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the order or to deliver the goods

12. FORCE MAJEURE

The Supplier will not be in default or in breach of any contract with the Customer as a result of Force Majeure. Force Majeure means any event or thing beyond the reasonable control of the Supplier and includes any strike or lock-out.

13. PRIVACY

13.1 The Customer hereby acknowledges that the Supplier has informed the customer that the Supplier might disclose to a credit reporting agency personal information (as defined in the Privacy Act 1988 (the Act)) about the Customer.

13.2 The Customer hereby authorises and consents to the Supplier collecting, retaining, recording, using and disclosing personal information about the Customer, in accordance with the Act, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Supplier, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.

13.3 The Customer also authorises and consents to the Supplier making enquiries with respect to the Customer's credit worthiness; to exchanging information with other Credit Providers in respect to previous defaults of the Customer and to notifying other Credit Providers of a default by the Customer.

14. GENERAL PROVISIONS

14.1 Severability — Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

14.2 Governing Law and Jurisdiction — These Terms and Conditions are governed by the law in force in the State or Territory in which the Supplier's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.