



TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 “Client” and/or “You” means the person/s ordering the Works as specified in any quote, invoice, document or order.
- 1.2 “Completion Date” means the date which We will have completed the Works.
- 1.3 “Price” means the price for the Works as agreed between You and Us in accordance with clause 4.
- 1.4 “Quote” means the quote provided to you prior to commencement of the Works.
- 1.5 “Terms and Conditions of Trade” means these terms and conditions of trade as amended from time to time.
- 1.6 “The Stone Restoration Company”, “We”, “Us” and “Our” means The Stone Restoration Company ABN: 50 189 396 890 and any person We assign or provide the authority to provide Works on Our behalf.
- 1.7 “Works” means any Goods, Services or Materials provided by Us to the Client at the Client’s request from time to time.

2. General

- 2.1 These Terms and Conditions are governed by both the Federal Laws of Australia and the relevant legislation of the state of Queensland.
- 2.2 You acknowledge and agree that We may amend, vary or otherwise modify these Terms and Conditions of Trade at any time and without notice. Where the Terms and Conditions of Trade are amended, varied or otherwise modified in accordance this clause, the updated Terms and Conditions of Trade will be made available at www.thestonerestorationcompany.com.au/.
- 2.3 Any failure of Ours to enforce any provision of these Terms and Conditions of Trade shall not be treated as a waiver of that provision, nor shall it affect Our right to subsequently enforce that provision. Nothing in these Terms and Conditions of Trade is intended to contravene any applicable law. To the extent that any provision in the Terms and Conditions of Trade is invalid or unenforceable, it is to be read down so as to be valid and enforceable, and otherwise must be severed to the extent of any invalidity or unenforceability, without affecting the remaining provisions of these Terms and Conditions of Trade.
- 2.4 You shall not be entitled to set off against, or deduct from the Price, any sums owed or claim to be owed to You by Us nor to withhold payment of any invoice because part of that invoice is in dispute.
- 2.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 2.6 You warrant that You have the power to enter into this agreement and have obtained all necessary authorisations to allow You to do so, that You are not insolvent and that this agreement creates binding, valid legal obligations on You.

3. Acceptance

3.1 You are taken to have exclusively accepted and are immediately bound (jointly and severally) by these Term and Conditions of Trade if You place an order with Us and accept delivery of the Works.

4. Price and Payment

4.1 The Price of the Works shall be indicated on the invoice provided to You by Us.

4.2 Time for payment shall be of the essence and stated on the invoice provide to You by Us. If no time is stated, then payment of the invoice will be due within 3 days of the date of the invoice issued by Us.

4.3 Unless clearly stated on the invoice, the Price does not include GST (Goods and Services Tax) and You agree to pay the GST to Us without deduction or set off.

4.4 We reserve the right to change the Price in the event of a variation to Our Quote. Any variation from the plan of scheduled Works or specifications (including, but not limited to, any variation due to unforeseen circumstances such as supply problems or delays, or as a result of increases to Us in the cost of materials and labour) will be charged by Us and shown as a variation on Our invoice. Payment of all variations must be made in full at the Completion Date.

5. Provision and Completion of Works

5.1 You accept that any specified Completion Date for provision of the Works is an estimate only and whilst We will endeavour to complete Works within the timeframe provided, We will not be liable for any loss or damage incurred by You as a result of the provision of Works being completed late.

5.2 You must provide Us with access to carry out the Works and You must remove any personal property likely to impede the Works.

5.3 You are responsible for securing any pets, personal items, furniture and further for removing, covering and protecting any items of value of which are at risk of damage from the Works. We will not be responsible for any accidental damage that may occur in the provision of the Works.

5.4 You agree to follow any direction given by Us in relation to the site for the duration of the Works and the period as advised after the Works.

5.5 We shall not be held liable for any defective surfaces or tiles. The varied quality, material and history of some surfaces may cause some stains to remain upon completion of the Works for which We are not liable for.

5.6 All risk associated with the Works shall immediately pass to the You upon completion of the Works.

6. Title

6.1 You agree that that your obligations to Us for the provision of the Works shall not cease (and ownership of the Materials shall not pass) until You have paid Us all amounts owing to Us.

6.2 Receipt by Us 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 Our ownership rights in respect of this agreement (and the Materials) shall continue.

6.3 You agree that until ownership of Materials passes to Us in accordance with clause 6.1, You are only a bailee of the Materials and unless the Materials have become fixtures You must return the Materials to Us upon request.

7. Personal Property Securities Act 2009 ("PPSA")

7.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

7.2 Upon acceptance of these Terms and Conditions of Trade in writing, You agree to be Grantor of Security Interest by the PPSA to Us. You acknowledge and agree that these Terms and Conditions of Trade constitute a security agreement for the purposes of the PPSA and create a security interest in all Materials and collateral (accounts) – being a monetary obligation to Us for the Works – that have been previously provided, and that will be provided in the future, by Us to You.

7.3 You undertake to:

- (a) promptly sign any further documents and/or provide any further information which We may reasonable require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii); indemnify, and upon demand reimburse, Us 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 registration made thereby;
- (b) not register a financing change statement in respect of a security interest without Our prior written consent;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without Our prior written consent.

7.4 You and The Stone Restoration Company agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions of Trade.

7.5 You hereby waive your rights to receive notices under section 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

7.6 You hereby waive your rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

7.7 Unless otherwise agreed in writing by Us, You waive your right to receive a verification statement in accordance with section 157 of the PPSA.

7.8 You agree to unconditionally ratify any actions taken by Us under clauses 7.3 to 7.5.

7.9 Subject to any express provisions to the contrary, nothing in these Terms and Conditions of Trade is intended to have the effect of contracting out of any of the provisions of the PPSA.

8. Security and Charge

8.1 In consideration of The Stone Restoration Company agreeing to provide the Works, You charge all of your right, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by You either now or in the future, to secure the performance of your obligations under these Terms and Conditions of Trade (including but not limited to, the payment of money).

8.2 You Indemnify Us from and against all of Our costs and disbursement including legal costs on a solicitor/client cost basis, incurred in exercising Our rights under this clause.

8.3 You irrevocably appoint Us as your true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on your behalf.

9. Defects, Warranties and Returns, Competition and Consumer Act 2010 (“CCA”)

- 9.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms and Conditions of Trade (“Non-Excluded Guarantees”).
- 9.2 We acknowledge that nothing in these Terms and Conditions of Trade purports to modify or exclude the Non-Excluded Guarantees.
- 9.3 Except as expressly set out in these Terms and Conditions of Trade or in respect of the Non-Exclusive Guarantees, The Stone Restoration Company makes no warranties or other representations under these Terms and Conditions of Trade, including but not limited to the quality or suitability of the Works. Our liability in respect of these warranties is limited to the fullest extent permitted by law.
- 9.4 If the Client is a consumer within the meaning of the CCA, Our liability is limited to the extent permitted by section 64A of Schedule 2.
- 9.5 If We are required to rectify, re-provide, or pay the costs of re-proving the Works under this clause or the CCA, but are unable to do so, then We may refund any money You have paid for the Works but only to the extent that such refund shall take into account the value of Works which have been provided to You which were not defective.
- 9.6 If the Client is not a consumer within the meaning of the CCA, Our liability for any defect or damage in the Works is:
- (a) limited to the value of any express warranty or warranty card provided to You at Our Sole discretion;
 - (b) limited to any warranty to which We are entitled, if We did not manufacture the Materials;
 - (c) otherwise negated absolutely.

10. Default and Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 3% per calendar month (and at Our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 10.2 If You owe Us any money, You shall indemnify Us from and against all costs and disbursements incurred by Us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor/client cost basis, Our contract default fee, and bank dishonour fees).
- 10.3 Without prejudice to any other remedies We may have, if at any time You are in breach of any obligation (including those relating to payment) under these Terms and Conditions of Trade, We may suspend or terminate the provision of Works to You. We will not be liable to You for any loss or damage that You may suffer because We have exercised Our rights under this clause.
- 10.4 Without prejudice to other remedies available to Us at law, We shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Us shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Us becomes overdue, or in Our opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent or bankrupt, convenes a meeting of its creditors or proposes or enters an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

11. Privacy Act 1988

- 11.1 You agree for Us to obtain from a credit reporting agency a credit report containing personal credit information about You in relation to credit provided by Us.
- 11.2 You agree that We may exchange information about You with those credit providers either named as trade referees provided by You or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by You; and/or
 - (b) to notify other credit providers of a default by You; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where You are in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- 11.3 You understand that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 11.4 You consent to Us being given a consumer credit report to collect overdue payment on commercial credit (section 18K(l)(h) Privacy Act 1988).
- 11.5 You agree that your personal credit information provided may be used and retained by Us for the following purposes (and for other purposes as shall be agreed between You and The Stone Restoration Company or required by law from time to time):
- (a) the provision of Works; and/or
 - (b) the marketing of Works by Us, Our agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the You; and/or
 - (e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 11.6 We may give information about You to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 11.7 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that The Stone Restoration Company is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection has been started;

- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in Our opinion, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by Us has been paid or otherwise discharged.

12. Limitation of Liability

- 12.1 The Stone Restoration Company shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by Us of these Terms and Conditions of Trade.
- 12.2 In the event of any breach of this agreement by Us, the remedies of the Client shall be limited to damages and Our liability (if any) whether in contract, tort or otherwise in respect of any defect in the Works, or for any breach of these Terms and Conditions of Trade, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.

For more Information on services provided by The Stone Restoration Company visit our website www.thestonerestorationcompany.com.au or call us on 0404 110 199 or email us at gareth@tsrco.com.au.