

RMS Natural Stone & Ceramics – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 Contract means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.2 "RMS" means RMS Natural Stone & Ceramics Pty Ltd T/A RMS Natural Stone & Ceramics, its successors and assigns or any person acting on behalf of and with the authority of RMS Natural Stone & Ceramics Pty Ltd T/A RMS Natural Stone & Ceramics.</p> <p>1.3 "Client" means the person's, entity or any person acting on behalf of and with the authority of the Client requesting RMS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Goods" means all Goods or Services supplied by RMS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit details.</p> <p>1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using RMS's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</p> <p>1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between RMS and the Client in accordance with clause 5 below.</p> <p>1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, RMS reserves the right to vary the Price with alternative Goods as per clause 5.2.</p> <p>2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Errors and Omissions</p> <p>3.1 The Client acknowledges and accepts that RMS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by RMS in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RMS in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of RMS, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>4. Change in Control</p> <p>4.1 The Client shall give RMS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by RMS as a result of the Client's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At RMS's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by RMS to the Client; or</p> <p>(b) RMS's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 RMS reserves the right to change the Price if:</p> <p>(a) if a variation to RMS's quotation is requested; or</p> <p>(b) if during the course of the Services, the Goods cease to be available from RMS's third party suppliers, then RMS reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or</p> <p>(c) to reflect any increases to RMS in the cost of performing the carriage of the Goods, which are beyond the reasonable control of RMS (including, without limitation, increases in the cost of labour, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs, etc.).</p> <p>5.3 RMS reserves the right to change the Price if a variation to RMS's quotation is requested. Variations will be charged for on the basis of RMS's quotation, and will be detailed in writing, and shown as variations on RMS's invoice. The Client shall be required to respond to any variation submitted by RMS within ten (10) working days. Failure to do so will entitle RMS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>5.4 At RMS's sole discretion, a non-refundable deposit may be required.</p> <p>5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date(s) determined by RMS, which may be:</p> <p>(a) on Delivery of the Goods;</p> <p>(b) before Delivery of the Goods;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by RMS.</p> <p>5.6 Payment may be made by cheque, electronic/online banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and RMS.</p> <p>5.7 RMS may in its discretion allocate any payment received from the Client towards any invoice that RMS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client RMS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RMS, payment will be deemed to be allocated in such manner as preserves the maximum value of RMS's Purchase Money Security Interest (as defined in the PPSA) in the Goods.</p> <p>5.8 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 RMS nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to RMS an amount equal to any GST RMS must pay for any supply by RMS under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6. Delivery of Goods</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods at RMS's address; or</p> <p>(b) RMS (or RMS's nominated carrier) delivers the Goods to the Client's nominated party address even if the Client is not present at the address.</p> <p>6.2 At RMS's sole discretion, the cost of Delivery is in addition to the Price.</p> <p>6.3 Any time specified by RMS for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. RMS will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then RMS shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>6.4 RMS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>7. Risk</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, RMS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RMS is sufficient evidence of RMS's rights to receive the insurance proceeds without the need for any person dealing with RMS to make further enquiries.</p> <p>7.3 If the Client requests RMS to leave Goods outside RMS's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.</p> <p>7.4 If the Client orders an insufficient number of tiles, then RMS will take no responsibility for any variation of colour in further batches supplied to the Client.</p> <p>7.5 Marble and Granite being porous products, therefore, all products supplied should be sealed for protection. However, oil and other acidic substances are prone to causing discoloration and staining if left on surfaces for some time. The Client agrees to indemnify RMS against any damage occurring after delivery and installation.</p> <p>7.6 The Client acknowledges and accepts that</p>	<p>(a) variations of colour, shade and grain are inherent in natural stone. While every effort will be taken by RMS to match colour, shade or grain of product, RMS shall not be liable for any loss or damages or costs whatsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied; and</p> <p>(b) RMS offers no guarantee against crazing, cracking, chipping or scratching; and</p> <p>(c) RMS will accept no responsibility for tiles that have been fixed; and</p> <p>(d) Goods supplied may be damaged or discoloured by:</p> <p>(i) exhibit variations in shade, colour, texture, surface, finish; and</p> <p>(ii) fade or change colour over time; and</p> <p>(iii) expand, contract or distort as a result of exposure to heat, cold, weather; and</p> <p>(iv) mark or stain if exposed to certain substances; and</p> <p>(v) be damaged or disfigured by impact or scratching.</p> <p>8. Accuracy of Client's Plans and Measurements</p> <p>8.1 In the event the Client gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Client);</p> <p>(a) it is the Client's responsibility to verify the accuracy of the information before the Client or RMS places an order based on the information. RMS accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause;</p> <p>(b) RMS shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, RMS accepts no responsibility for any loss, damages, or costs however resulting therefrom.</p> <p>9. Installation Of Light And Green Coloured Marble</p> <p>9.1 Green marble includes a certain degree of copper which undergoes a chemical reaction when exposed to a strong alkaline solution (such as cement and water). Cement based adhesives must not be used when fixing light coloured or green marble as this would cause burning or blistering to the surface of the polished marble tile. RMS accepts no responsibility where any product that is not a pure epoxy adhesive or latex has been used for the fixing of the Goods or in the case of grouting, where other than a pure epoxy grout has been used.</p> <p>9.2 Acid or acidic based cleaners must not be applied to any marble or granite or natural stone product.</p> <p>10. Title</p> <p>10.1 RMS and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid RMS all amounts owing to RMS; and</p> <p>(b) the Client has met all of its other obligations to RMS.</p> <p>10.2 Receipt by RMS 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.</p> <p>11. Personal Property Securities Act 2009 ("PPSA")</p> <p>11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>11.2 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 a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to RMS for Services – that have previously been supplied and that will be supplied in the future by the Client.</p> <p>11.3 The Client undertakes to:</p> <p>(a) 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 RMS may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) correct any other document required to be registered by the PPSA; or</p> <p>(iii) register a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, RMS 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;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of RMS;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of RMS;</p> <p>(e) immediately advise RMS 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.</p> <p>11.4 RMS 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.</p> <p>11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(a) and 132(4) of the PPSA.</p> <p>11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>11.7 Unless otherwise agreed to in writing by RMS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>11.8 The Client must unconditionally ratify any actions taken by RMS under clauses 11.3 to 11.5.</p> <p>11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>12. Security and Charge</p> <p>12.1 In consideration of RMS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future; to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>12.2 The Client indemnifies RMS from and against all RMS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RMS's rights under this clause.</p> <p>12.3 The Client irrevocably appoints RMS and each director of RMS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.</p> <p>13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>13.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify RMS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow RMS to inspect the Goods.</p> <p>13.2 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 ("Non-Excluded Guarantees").</p> <p>13.3 RMS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, RMS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. RMS's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>13.5 If the Client is a consumer within the meaning of the CCA, RMS's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>13.6 If RMS is required to replace the Goods under this clause or the CCA, but is unable to do so, RMS may refund any money the Client has paid for the Goods.</p> <p>13.7 If the Client is not a consumer within the meaning of the CCA, RMS's liability for any defect or damage to the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by RMS at RMS's sole discretion;</p> <p>(b) limited to any warranty to which RMS is entitled, if RMS did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>13.8 Subject to this clause 13, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 13.1; and</p> <p>(b) RMS has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, RMS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods;</p> <p>(b) the Client using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by RMS;</p> <p>(e) fair wear and tear, accident, or act of God.</p> <p>13.10 RMS may in its sole discretion accept non-defective Goods for return in which case RMS may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.</p> <p>14. Intellectual Property</p> <p>14.1 The Client agrees that RMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which RMS has created for the Client.</p> <p>15. Default and Consequences of Default</p> <p>15.1 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 a half percent (2.5%) per calendar</p>
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Please note that a larger print version of these terms and conditions is available from RMS on request.