RMS Natural Stone & Ceramics - Terms & Conditions of Trade

- **Definitions**"Contract" means the terms and conditions contained herein, together with any nuotation, order, invoice or other document or amendments expressed to be
- quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 "RMS" means RMS Natural Stone & Ceramics Pty Ltd TIA 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 TIA RMS Nat

- (s) if there is more than one Client, is a reference to each Client jointly and severally, (s) if the Client is a parter sharp, it shall bind each partner jointly and severally, and (s) if the Client is a part of a trust, shall be bound in their capacity as a trustee, and (d) includes the Client's executors, administrators, successors and permitted assigns. '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).

 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not intimed to, this Contract, either part's intellectual property, operational information, know-how, trade secrets, financial and commercial affiriars, contracts, client information (including) but not limited to, this Contract, either part's intellectual property, operational information, know-how, trade secrets, financial and commercial affiriars, contracts, client information (including) but not limited to, the consense details, electronic contract (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and princing details.

 "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 three Cookies in the Price payable (plus any QST where applicable) for the Goods as agreed between RMS and the Client in accordance with clause 5 below.

 "GST means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax as defined wit

- 1.8 and Services Tax) Act 1999" (Cth).

- Acceptance
 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 Coods.
 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 23
- Contract shall prevail.

 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

 The Client advance/deges 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. 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.

- Errors and Omissions
 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):

 (a) resulting from an inadvertent mistake made by RMS in the formation and/or administration of this Contract, and/or

 (b) contained infomitted from any literature (hard copy and/or electronic) supplied by RMS in respect of the Services.

 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 wifful misconduct of RMS; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

Change in Control
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 annee, 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.

- 5.7

- pnone or tax numbers, crange or trustees, or ousness practice). In ec lient shall be inable for any loss incurred by RMS as a result of the Client's failure to comply with this clause.

 Price and Payment

 At RMS's sole discretion, the Price shall be either:

 (a) as indicated on any invoice provided by RMS to the Client; or

 (b) RMS quoted price (subject to clause 5.2) which will be valid for the period stated in MS and the state of the client of the client or (c) as indicated on any invoice provided by RMS to the Client; or

 (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 change the Price;

 (a) if a variation to RMSs quotation is requested; or

 (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

 (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 Idaour, foreign exchange fluctuations, or increases in the cost of Idaour, foreign exchange fluctuations, or increases in the cost of Idaour, foreign exchange fluctuations, or increases in the cost of Lordon, the Client of the Advanction or RMS's quotation is requested. Variations will be charged for on the basis of RMS's quotation, and will be cleated 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.

 At RMS's sole discretion, an on-refundable deposit may be required.

 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the Add selds externation by RMS, whi

- Delivery of Goods
 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 (a) the Client or the Client's nominated carrier takes possession of the Goods at RMS's

- (a) the Cuent of the Unier's hominated carrier) delivers the Goods to the Client's nominated address; or (b) RMS (or RMS's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

 At RMS's sole discretion, the cost of Delivery is in addition to the Price.

 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 tale. 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 strange.
- storage.

 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.

7. 7.1

- Risk
 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.
 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 is rights to receive the insurance proceeds without the need for any person dealing
 with RMS to make further enquiries.
 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.
- 7.3
- 74
- sole risk.

 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.

 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 discolouration and staining if left on surfaces for some time. The Client agrees to indemnify RMS against any damage occurring after delivery and installation. The Client acknowledges and accepts that 7.5

- 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, damages or costs howsoever arising resulting from any variation colour, shading or grain between batches of product or sale samples and the final product supplied, and RMS offers no guarantee against crazing, cracking, chipping or scratching; and RMS offers no guarantee against crazing, cracking, chipping or scratching; and RMS offers no guarantee against crazing, cracking, chipping or scratching; and Goods supplied may;
 (i) exhibit variations in shade, colour, texture, surface, finish; and
 (iii) fade or change colour over time; and
 (iiii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 (iv) mark or stain if exposed to certain substances; and
 (v) be damaged or disfigured by impact or scratching.

- (v) be carriaged or basigured by impact or scratching.

 Accuracy of Client's Plans and Measurements
 In the event the Client gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Client's responsibility to verify the accuracy of the information. Before the Client or RMS places an order based on the information. Bris accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause;
 (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's inaccurate, RMS accepts no responsibility for any loss, damages, or costs however resulting therefrom.

- Installation Of Light And Green Coloured Marble Green marble includes a certain degree of copper v installation Of Light And Green Coloured Marble
 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 void
 cause burning or bilstering to the surface of the polished marble tile. RMS accepts no
 responsibility where any product that is not a pure epoxy adhesive or laticrete has been
 used for the fixing of the Goods or in the case of grouting, where other than a pure epoxy
 month has been used.
- grout has been used.
 Acid or acidic based cleaners must not be applied to any marble or granite or natural stone product.

- **10.** 10.1
- Title
 RMS and the Client agree that ownership of the Goods shall not pass until:
 (a) the Client has paid RMS all amounts owing to RMS; and
 (b) the Client has met all of its other obligations to RMS.
 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.

- Personal Property Securities Act 2009 ("PPSA")
 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
 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 Coods 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 RMS to the Client.
 The Client undertakes to:
 (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;
- - information to be complete, accurate and up-to-date in all respects) which RMS may reasonably require to;
 (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 (iii) register any other document required to be registered by the PPSA or (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii); indemnity, and upon demand remiburse, 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, not register a financing change statement in respect of a security interest without the

 - charged thereby, not register a financing change statement in respect of a security interest without the prior written consent of RMS; 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; 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.

- such sales. Rand 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. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 123(4) of the PPSA. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA. 11.6
- the PPSA.

 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.

 The Client must unconditionally ratify any actions taken by RMS under clauses 11.3 to 11.5. 118
- 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. 11.9

- Security and Charge
 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, really 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,
- performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

 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.

 The Client irrevocably appoints RMS and each director of RMS as the Client's true and lawful attorneys 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.
- 12.3

Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)
 The Client must inspect the Goods on Delivery and must within seven (7) days of
 Delivery notify RMS in writing of any evident defectioanage, 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.
 Under applicable State, Territory and Commonwealth Law (including, without limitation
 the CCA), certain statutory implied guarantees and warranties (including, without
 imitation the statutory quarantees under the CCA) may be implied into these terms and
 conditions (Non-Excluded Guarantees).
 RMS acknowledges that nothing in these terms and conditions purports to modify or
 exclude the Non-Excluded Guarantees.
 RMS acknowledges that nothing in these terms and conditions or in respect of the Non-Except as expressly set out in these terms and conditions or in respect of the Non-Excited 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.

- 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.
- 13.6
- 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.
 If RMS is required to replace the Goods under this clause or the CCA, but is unable to do s, RMS may refund any money the Client has paid for the Goods.
 If the Client is not a consumer within the meaning of the CCA, RMS's liability for any defect or damage in the Goods is:

 (a) limited to the value of any express warranty or warranty card provided to the Client by RMS at RMS's sole discretion;

 (b) limited to any warranty to which RMS is entitled, if RMS did not manufacture the Goods;

 (c) otherwise negated absolutely.
 Subject to this clause 13, returns will only be accepted provided that:

 (a) the Client has complied with the provisions of clause 13.1; and

 (b) RMS has agreed that the Goods are defective; and

 (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and

 (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

- s is possible

 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:

 (a) the Client falling to properly maintain or store any Goods:

 (b) the Client using the Goods for any purpose other than that for which they were
- (b) the Client using the Oods to any purpose other and that is a man as a designed;
 (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;
 (d) the Client failing to follow any instructions or guidelines provided by RMS;
 (e) fair wear and tear, any accident, or act of Cod.
 RMS may in its absolute 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.

Intellectual Property 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.

Default and Consequences of Default 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

- month (and at RMS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

 If the Client owes RMS any money the Client shall indemnify RMS from and against all costs and disbursements incurred by RMS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RMS's contract default fie, and bank dishonour fees).

 Further to any other rights or remedies RMS may have under this Contract, if a Client has made payment to RMS, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by RMS under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract. Without prejudice to RMS's other remedies at law RMS shall whether or not due for payment, become immediately payable if:

 (a) any money payable to RMS becomes overdue, or in RMS's opinion the Client will be unable to make a payment when if falls due.

 (b) the Client has exceeded any applicable credit limit provided by RMS;

 (c) 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;

 (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

- Cancellation
 Without prejudice to any other remedies RMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RMS may suspend or terminate the supply of Goods to the Client. RMS will not be liable to the Client for any loss or damage the Client suffers because RMS has
- exercised its rights under this clause. RMS 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 RMS shall repay to the Client any moods. RMS shall not be liable for any loss or damage whatsoever arising
- from such cancellation. In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by RMS as a direct result of the
- and an loss incurred (whether direct or indirect) by Notes as a direct result of the cancellation (including, but not limited to, any loss of profits). Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has

- items, will definitely not be accepted once production has commenced, or an order has been placed.

 Privacy Policy
 All emails, documents, images or other recorded information held or used by RMS is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. RMS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information prusant to the Privacy Ad 1986 ('the Act) including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ('EEA'), under the EU Data Privacy Laws (including the General Data Protection Regulation 'GDPR') (collective); EU Data Privacy Laws (including the General Data Protection Regulation 'GDPR') (collective); EU Data Privacy Laws). RMS acknowledges that in the event it becomes aware of any data breaches and/or sclosure of the Client, Sersonal Information, held by RMS that may result in senious harm to the Client, RMS will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information, held by RMS that may result in senious harm to the Client, RMS will notify the Client in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent. Notwithstanding clause 17.1, privacy limitations will extend to RMS in respect of Cookies where the Client tullises RMS's website to make enquiries. RMS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Clients.

 (a) IP address, browser, email client type and other similar details;
 (b) tracking website usage and traffic; and (c) reports are available to RMS when RMS sends an email to the Client, so RMS may obleat and review that information ("collectively Personal Information") of the Client consents to RMS when RM

- The Client consents to RMS being given a consumer credit report to collect overdue payment on commercial credit. The Client agrees that personal credit information provided may be used and retained by RMS for the following purposes (and for other agreed purposes or required by):

 (a) the provision of Goods, and/or of Client's credit, payment and/or status in relation to the provision of Goods, and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client's and/or status in requested by the Client and/or substanding in relation to the Goods. RMS may give information about the Client to CRB for the following purposes:

 (a) to obtain a consumer credit report;
 (b) allow the CRB to create or maintain a credit information file about the Client including credit history.

- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.

 The information given to the CRB may include:

 (a) Personal information as outlined in 17.3 above;

 (b) name of the credit provider and that RMS is a current credit provider to the Client;

 (c) whether the credit provider is a licensee;

 (d) type of consumer credit;

 (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

 (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding mories which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and RMS has been paid or otherwise discharged and all defails surrounding that discharge (e.g. dates of payments);

 (g) information that, in the opinion of RMS, the Client has committed a serious credit infringement;

- (g) information that in the opinion of RMS, the Client has committed a serious credit infingement;

 (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty obliens (§150).

 The Client shall have the right to request (by e-mail) from RMS:

 (a) a copy of the Personal Information about the Client retained by RMS and the right to request that RMS correct any incorrect Personal Information; and

 (b) that RMS does not disclose any Personal Information; and

 (b) that RMS does not disclose any Personal Information about the Client for the purpose of direct marketing.

 RMS will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law. Hen Client can make a privacy complaint by contacting RMS via e-mail. RMS will respond to that complaint thin seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint thin thirty (30) days of receipt of the complaint. The event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oac.gov.au.

- General
 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, llegal or unenforceable the validity, existence, legality and enforceablity of the remaining provisions shall not be affected, prejudiced or impaired. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which RMS has its principal place of business, and are subject to the jurisdiction of the courts in New South Wales. Subject to dause 13, RMS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Clent anising out of a breach by RMS of these terms and conditions (alternatively RMS sliability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4
- the Price of the Goods). RISM may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent. The Client cannol ticence or assign without the written approval of RMS. The Client agrees that RMS may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for RMS to provide Goods to the Client.

 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 narky.
- 18.7
- of either party.

 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.