
Gosford Quarries Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 **"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 history) and pricing details.
- 1.2 **"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.
- 1.3 **"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 Customer does not wish to allow Cookies to operate in the background when using GQ's website, then the Customer 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.**
- 1.4 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting GQ to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors, and permitted assigns.
- 1.5 **"Goods"** means all Goods or Services supplied by GQ to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"GQ"** means Gosford Quarries Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Gosford Quarries Pty Ltd.
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between GQ and the Customer in accordance with clause 8 below.

2. Construction

- 2.1 In this Contract, unless the context requires otherwise:
- (a) **"Numbers"** means words importing the singular include the plural and vice versa;
- (b) **"Gender"** mean words importing any gender include the other genders;
- (c) **"Statutory amendments"** means a reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (d) **"Joint obligations"** means an obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally and vice versa;
- (e) **"Parts of agreement"** means references to this Contract include its recitals, clauses, schedules, and annexures;
- (f) **"Headings"** means headings shall be ignored in construing this Contract; and
- (g) **"Plurals"** means the singular shall include the plural and vice versa and words importing one Gender shall include every Gender and a reference to a person shall include any other legal entity of whatsoever kind and vice versa.

3. Acceptance

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 3.2 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.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Customer acknowledges and agrees that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with GQ and it has been approved with a credit limit established for the account;
- (b) in the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, GQ reserves the right to refuse delivery until such time as the credit account new limit is approved and all outstanding monies are paid;
- (c) where the Customer is an account holder then GQ reserves the right to request the Customer to provide financial information as is reasonably required by GQ from time-to-time for the assessment of current and future credit limits only. GQ shall treat such information as being strictly confidential;
- (d) where the Customer does not elect to control their purchases by a purchase order and/or a letter of authority, then all purchases made by Customer and/or any other third party acting on behalf of the Customer to which the Goods are charged to the Customer's credit account, shall remain at all times payable by the Customer. All said notices of restrictions pertaining to purchases must be writing and will remain in place until such time as the Customer revokes;
- (e) at GQ's sole discretion, GQ reserves the right either to accept or decline any purchase order/s received by the Customer. Such acceptance and/or decline may be made by written notice or by the supply of Goods to the Customer;
- (f) the Customer agrees to notify GQ in writing immediately upon of the departure of the Customer employee if an authorised account user. Failure to advise GQ of such departures, then the Customer acknowledges they will be bound by all purchase orders made by that account user; and
- (g) 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, GQ reserves the right to vary the Price with alternative Goods as per clause 8.2, subject to prior confirmation and agreement of both parties.

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- 3.5 None of GQ's agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of GQ in writing nor is GQ bound by any such unauthorised statements.
- 3.6 Any advice, recommendation, information, assistance, or service provided by GQ in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on GQ's own knowledge and experience and shall be accepted without liability on the part of GQ. Where such advice or recommendations are not acted upon then GQ shall require the Customer or their agent to authorise commencement of the Services in writing. GQ shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 4. Electronic Transactions Act 2000**
- 4.1 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 (NSW), section 9 of the Electronic Transactions (Victoria) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 5. Errors and Omissions**
- 5.1 The Customer acknowledges and accepts that GQ 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 GQ in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by GQ in respect of the Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of GQ; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5.3 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Customer Error**"). The Customer must pay for all Goods it orders from GQ notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Goods. GQ is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.
- 6. Change in Control**
- 6.1 The Customer shall give GQ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by GQ as a result of the Customer's failure to comply with this clause.
- 7. Credit Card Information**
- 7.1 GQ will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by GQ;
 - (b) not disclose the Customer's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 19) or where required by law.
- 7.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, GQ is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.
- 8. Price and Payment**
- 8.1 At GQ's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by GQ to the Customer; or
 - (b) GQ's quoted Price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of forty-five (45) days.
- 8.2 GQ reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations etc) which are only discovered on commencement of the Services; or
 - (d) if during the course of the Services, the Goods cease to be or are not available from GQ's third-party suppliers, then GQ reserves the right to provide alternative Goods; or
 - (e) in the event of increases to GQ in the cost of Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond GQ's control.
- 8.3 Variations will be charged for on the basis of GQ's quotation, and will be detailed in writing, and shown as variations on GQ's invoice. The Customer shall be required to respond to any variation submitted by GQ within ten (10) working days. Failure to do so will entitle GQ 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.
- 8.4 At GQ's sole discretion:
- (a) a deposit of thirty percent (30%) may be required for all orders that exceed two thousand dollars (\$2,000); and
 - (b) all orders under this amount will require payment in full prior to production.

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- 8.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by GQ, which may be:
- (a) before delivery of the Goods;
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by GQ.
- 8.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and GQ.
- 8.7 GQ may in its discretion allocate any payment received from the Customer towards any invoice that GQ determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer GQ may re-allocate any payments previously received and allocated. In the absence of any payment allocation by GQ, payment will be deemed to be allocated in such manner as preserves the maximum value of GQ's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 8.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by GQ nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify GQ in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as GQ investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in GQ placing the Customer's account into default and subject to default interest in accordance with clause 17.1.
- 8.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to GQ an amount equal to any GST GQ must pay for any supply by GQ under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

9. Delivery of Goods

- 9.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at GQ's address; or
 - (b) GQ (or GQ's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 9.2 At GQ's sole discretion, the cost of Delivery is in addition to the Price.
- 9.3 GQ 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.
- 9.4 The Customer shall take Delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy or to the value that has been delivered.
- 9.5 Goods will be delivered to the kerbside adjacent to the Delivery address. If at the Customer's request, the delivery vehicle leaves the road and enters the Delivery site to unload the Customer is responsible for providing suitable and safe access for GQ's delivery vehicle and agrees to indemnify GQ and its agents for all damage (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) and injury to any person and to any public or private property which may result, including any costs associated with enabling the delivery vehicle to leave the site unless due to the negligence of GQ.
- 9.6 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify GQ against all costs incurred by GQ in recovering such vehicles in the event they become bogged or otherwise immovable.
- 9.7 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 9.8 Any time specified by GQ for Delivery of the Goods is an estimate only and GQ will not be liable for any loss or damage incurred by the Customer because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If GQ is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then GQ shall be entitled to charge a reasonable fee for redelivery and/or storage.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, GQ is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by GQ is sufficient evidence of GQ's rights to receive the insurance proceeds without the need for any person dealing with GQ to make further enquiries.
- 10.3 If the Customer requests GQ to leave Goods outside GQ's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 10.4 The Customer acknowledges and accepts that:
- (a) sandstone is a natural product and as such may exhibit variations in grade, size, texture, shade, colour, surface, markings, veining, and contain natural fissures, occlusions, and indentations. While every effort will be taken by GQ to match colour, shape or grain of product, GQ shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied;
 - (b) where the Customer request GQ to supply Goods (including but not limited to sandstone) with strict colour uniformity that such must be advised at the time of quotation and may incur additional charges which will be invoiced as a variation in accordance with clause 8.2;
 - (c) Goods supplied may:
 - (i) fade or change colour over time;
 - (ii) expand, contract, or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and

(iv) be damaged or disfigured by impact or scratching.

11. Compliance with Laws

- 11.1 The Customer and GQ shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 11.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, the Building Act 1993, comply with section 74AA (products associated with building works and/or the intended use) and section 74AE (Chain of Responsibility) of the QBCC Act 1991 in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.4 The Customer is responsible for the proper storage, handling and use of the Goods and undertakes to do all that is necessary to ensure that the Goods are stored, handled, maintained, or used without risk to safety, health, or the environment.
- 11.5 Without limiting the Customers obligations under clause 11.4, the Customer acknowledges that the Customer has familiarised itself with any recommended handling procedures contained in any Material Safety Data Sheet in respect of the Goods.
- Modern Slavery*
- 11.6 For the purposes of clauses 11.6 to 11.11:
- (a) “**Act**” means the *Modern Slavery Act 2018 (cth)*
 - (b) “**Modern Slavery**”, “**Modern Slavery Statement**” and “**Reporting Entity**” have the meanings given by the Act.
- 11.7 If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 11.8 Whether the Customer is a Reporting Entity or not, the Customer shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to GQ a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of GQ’s request (or such longer period as GQ agrees), provide to GQ any information or assistance reasonable requested by GQ;
 - (i) concerning the Customer’s compliance with the Act;
 - (ii) concerning the Customer’s operations and supply chains;
 - (iii) to enable GQ to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable GQ to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 11.9 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and GQ will be able to terminate the Contract for any breach by the Customer.
- 11.10 The Customer warrants that any information supplied to GQ is true and accurate and may be relied upon for the purposes of the Act.
- 11.11 The Customer shall indemnify GQ against any loss or liability suffered by GQ as a result of the Customer’s breach of this clause 11.

12. Title

- 12.1 GQ and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid GQ all amounts owing to GQ; and
 - (b) the Customer has met all of its other obligations to GQ.
- 12.2 Receipt by GQ 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to GQ on request;
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for GQ and must pay to GQ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for GQ and must pay or deliver the proceeds to GQ on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of GQ and must sell, dispose of or return the resulting product to GQ as it so directs;
 - (e) the Customer irrevocably authorises GQ to enter any premises where GQ believes the Goods are kept and recover possession of the Goods;
 - (f) GQ may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of GQ;
 - (h) GQ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

13. Personal Property Securities Act 2009 (“PPSA”)

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

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- 13.2 Upon assenting to these terms and conditions in writing the Customer 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 Goods that have previously been supplied and that will be supplied in the future by GQ to the Customer, and the proceeds from such Goods.
- 13.3 The Customer 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 GQ 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;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, GQ 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;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of GQ;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of GQ;
 - (e) immediately advise GQ of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 13.4 GQ and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by GQ, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer must unconditionally ratify any actions taken by GQ under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of GQ agreeing to supply the Goods, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering GQ's security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies GQ from and against all GQ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GQ's rights under this clause.
- 14.3 The Customer irrevocably appoints GQ and each director of GQ as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect the Goods on Delivery and must within forty-eight (48) days of Delivery notify GQ in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow GQ to inspect the Goods.
- 15.2 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**).
- 15.3 GQ acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, GQ makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. GQ's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, GQ's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If GQ is required to replace the Goods under this clause or the CCA, but is unable to do so, GQ may refund any money the Customer has paid for the Goods.
- 15.7 If the Customer is not a consumer within the meaning of the CCA, GQ'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 Customer by GQ at GQ's sole discretion;
 - (b) limited to any warranty to which GQ is entitled, if GQ did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) GQ has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer'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.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, GQ 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 Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;

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- (c) the Customer 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 Customer failing to follow any instructions or guidelines provided by GQ;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 GQ may in its absolute discretion accept non-defective Goods for return in which case GQ may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 15.11 Notwithstanding anything contained in this clause if GQ is required by a law to accept a return, then GQ will only accept a return on the conditions imposed by that law.
- 15.12 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

16. Intellectual Property

- 16.1 All designs, drawings, specifications, brochures, catalogues, websites, price lists, advertising material and computer software are the copyright and shall remain the property of GQ and must not be copied, reproduced, or divulged either directly or indirectly to any other person without GQ's prior written permission.
- 16.2 Tools, patterns, and other equipment used in the manufacture of any of GQ's stone shall remain the property of GQ unless otherwise expressly agreed in writing. The Customer shall not permit any third party to use such tool, pattern or other equipment nor disclose to any third party any technical, dimensional or design details, or any other information in respect of such tool, pattern, or other equipment at any time.
- 16.3 The Customer warrants that all designs, specifications, or instructions given to GQ will not cause GQ to infringe any patent, registered design, or trademark in the execution of the Customer's order and the Customer agrees to indemnify GQ against any action taken by a third party against GQ in respect of any such infringement.
- 16.4 The Customer agrees that GQ may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, or Goods which GQ has created for the Customer.

17. Default and Consequences of Default

- 17.1 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 month (and at GQ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes GQ any money, the Customer shall indemnify GQ from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, GQ's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 17.3 Further to any other rights or remedies GQ may have under this Contract, if a Customer has made payment to GQ, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by GQ under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 17.4 Without prejudice to GQ's other remedies at law GQ shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to GQ shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to GQ becomes overdue, or in GQ's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by GQ;
 - (c) the Customer 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; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

18. Cancellation

- 18.1 Without prejudice to any other remedies GQ may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions GQ may suspend or terminate the supply of Goods to the Customer. GQ will not be liable to the Customer for any loss or damage the Customer suffers because GQ has exercised its rights under this clause.
- 18.2 GQ 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 Customer. On giving such notice GQ shall repay to the Customer any money paid by the Customer for the Goods. GQ shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 If the Customer cancels Delivery of Goods, the Customer shall be liable for all losses incurred (whether direct or indirect) by GQ as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

19. Privacy Policy

- 19.1 All emails, documents, images, or other recorded information held or used by GQ is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. GQ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("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") (collectively, "EU Data Privacy Laws"). GQ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held

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- by GQ that may result in serious harm to the Customer, GQ will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to GQ in respect of Cookies where the Customer utilises GQ's website to make enquiries. GQ 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to GQ when GQ sends an email to the Customer, so GQ may collect and review that information ("collectively Personal Information")
- If the Customer consents to GQ's use of Cookies on GQ's website and later wishes to withdraw that consent, the Customer may manage and control GQ's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Customer agrees that GQ may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 19.4 The Customer consents to GQ being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 19.5 The Customer agrees that personal credit information provided may be used and retained by GQ for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer'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 Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.6 GQ may give information about the Customer to a 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 Customer including credit history.
- 19.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that GQ is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer'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 (provided GQ is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies 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 Customer no longer has any overdue accounts and GQ has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of GQ, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.8 The Customer shall have the right to request (by e-mail) from GQ:
- (a) a copy of the Personal Information about the Customer retained by GQ and the right to request that GQ correct any incorrect Personal Information; and
 - (b) that GQ does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.9 GQ will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.10 The Customer can make a privacy complaint by contacting GQ via e-mail. GQ will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Service of Notices

- 20.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

- 21.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not GQ may have notice of the Trust, the Customer covenants with GQ as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of GQ (GQ will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

22. Other Applicable Legislation

- 22.1 At GQ's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), the Building and Construction Industry Security of Payments Act 1999 (New South Wales) and the Building Industry Fairness (Security of Payment) Act 2017 (Queensland), may apply.
- 22.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 22.1 (each as applicable), except to the extent permitted by the Act where applicable.

23. Dispute

- 23.1 GQ and the Customer will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Contract or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.

24. General

- 24.1 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, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales in which GQ has its principal place of business and are subject to the jurisdiction of the Hornsby Local Court in New South Wales. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 24.3 Subject to clause 15, GQ shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by GQ of these terms and conditions (alternatively GQ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 GQ may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of GQ.
- 24.6 GQ may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of GQ's sub-contractors without the authority of GQ.
- 24.7 The Customer agrees that GQ may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for GQ to provide Goods to the Customer.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to GQ.
- 24.9 Both parties warrant that they have the power to enter 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.
- 24.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.