

TERMS OF SUPPLY - RETAIL

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this Terms of Trade, the Reference Schedule, and includes all attachments or annexures, amendments, or variations to this Agreement;

Deliver or **Delivery** means delivery of the Products to the Customer's nominated address;

Delivery Timeframe means the estimated delivery window for the Products to the Customer;

Deposit means the deposit payable by the Customer specified in the Quote;

GST means Goods and Services Tax as defined under the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Intellectual Property includes but is not limited to copyright, trademarks, designs, patents, processes and all other intellectual property that is capable of legal protection, regardless of whether such legal protection has been formally obtained;

Invoice means an invoice that complies with the taxation and other applicable laws of the country in which the invoice is issued. Where issued by Macrostone to the Customer, the invoice should exclude GST;

Law means all applicable legislation, Acts, rules, regulations and by-laws current in the territory together with all amendments and replacing laws;

Material Breach means any of the following: (a) any breach of a clause that is described as an essential term; (b) any breach of a clause that is capable of rectification and the Party in breach has failed to rectify within 14 days after being requested so to do by the other Party;

Notice means a notice in writing including those sent by facsimile, letter, email and conveyed in accordance with this Agreement;

Order means an Order placed by the Customer on Macrostone for any of the Products which Order must be in the form from time to time specified by Macrostone. An Order may be the acceptance of a Quote or a direct order for Products;

Party or **Parties** means the Parties to this Agreement as specified in Item 1 of the Order, and includes their lawful successors and assigns. Any reference to a party will include, where applicable, any subsidiary controlled by a Party or by the same persons who control that Party;

Price List means the Product and corresponding price list provided by Macrostone to the Customer for the purposes of this Agreement and is based on Full Container Loads of Products;

Products include all the Products listed in an Order or Quote by the Customer and all components of the Products;

Purchase Price means the amount payable by the Customer to Macrostone for the Products as specified in the Price List or if not on the Price List as specified in the Quote or accepted Order. All prices are ex-GST; and

Quote means an estimate for a particular Product provided by Macrostone to the Customer to assist in their decision-making process to place an Order. A Quote may also annex certain Intellectual Property owned by Macrostone and the Customer is bound by the Confidentiality and Intellectual Property provisions in 4.

1.2 Interpretation

In this Agreement:

- (a) words importing any genders include all genders;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) a reference to a person includes anybody that is recognised by Law in the territory as such, whether as a natural person or a body corporate;
- (e) a reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns (and, where applicable, the party's legal representatives);
- (f) a reference to currency shall mean AUD exclusive of any taxes; and
- (g) a reference to legislation or regulations shall include all amendments and re-enactments.

2. ACCEPTANCE, QUOTES AND ORDERS

2.1 By accepting a Quote the Customer is deemed to have read, understood and be bound by these Terms and Conditions.

2.2 The Customer has requested and Macrostone has agreed to provide a Quote for Products.

2.3 A Quote is only accepted by the Customer at the time the Customer notifies Macrostone in writing that it accepts the Quote. If the Customer varies the Quote when it accepts the Quote, it is deemed a rejection of the Quote and Macrostone is not bound to accept the Customer's variation to the Quote.

2.4 If the Customer accepts the Quote, the Customer must:

- (a) pay the Deposit specified in the Quote;
- (b) pay the balance of the Purchase Price in accordance with the payment timetable in the Quote.

2.5 Macrostone will not commence the supply of the Products until the Customer has paid the Deposit.

2.6 If the Customer does not accept the Quote or the acceptance date for the Quote has lapsed (which is 28 days unless otherwise notified), the Quote will be deemed expired.

2.7 If the Customer later requests an Order based on an expired Quote, Macrostone may issue a new Quote with the updated Purchase Price and other terms.

2.8 If the Customer subsequently requires an amendment to an accepted Order after it has accepted a Quote, Macrostone may accept the request to vary the Order in its discretion and shall advise the Customer of any changes to the Purchase Price which must be accepted before the variation is deemed to be accepted by Macrostone. Macrostone reserves the right to charge a reasonable administration fee to effect any agreed variation.

3. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

3.1 Macrostone is the exclusive owner of all of Macrostone's Intellectual Property in the Products, including any Intellectual Property provided in conjunction with a Quote, e.g. designs.

3.2 The Customer may not challenge or dispute Macrostone's ownership of Macrostone's Intellectual Property.

3.3 The Customer must not do anything or omit to do anything which could detrimentally affect the ownership of Macrostone's Intellectual Property.

3.4 The Customer must not use any of Macrostone's Intellectual Property for any other purpose without the prior written consent of Macrostone, including but not exclusive to using Macrostone's Intellectual Property to have Products manufactured by a third party.

3.5 The Customer must only use Macrostone's Intellectual Property:

- (a) prior to accepting or rejecting the Quote, to assess whether the Products are suitable to their own needs and requirements; and
- (b) at all other times, in accordance with Macrostone's directions.

3.6 If the Customer rejects a Quote, the Customer must return all of Macrostone's Intellectual Property to Macrostone at its own cost. Alternatively, Macrostone may direct the Customer to destroy all copies of Macrostone's Intellectual Property it holds.

4. MACROSTONE OBLIGATIONS

4.1 Macrostone will endeavour to supply the Products to the Customer in accordance with the Order or Quote.

4.2 Due to third party service providers Macrostone may use to Deliver the Products, Macrostone does not make any guarantees that it will be able to Deliver the Products in accordance within strict timelines. However, Macrostone will undertake reasonable steps in order to do so.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer agrees that it will undertake its own due diligence as to the suitability of the Products to their needs and requirements.

5.2 The Customer will be responsible for its own storage of the Products and must comply with Macrostone's recommendations for storage.

6. TRANSFER OF TITLE AND RISK

6.1 The Customer accepts the risk of loss or damage to the Products from the time that the Products are Delivered.

6.2 Title to the Products transfers from Macrostone to the Customer upon full payment of the Purchase Price for the Products.

7. PRODUCT DEFECTS AND GENERAL LIABILITY

7.1 This clause 7 is subject to clause 10 (**Exclusions and Limitations**), clause 11 (**Statutory Rights**) and any other statutory or legal right whether under this Supply Agreement or otherwise.

7.2 Macrostone warrants to the Customer that:

- (a) The Products will be fit and Merchantable at that time, and will meet and be in accordance with the applicable standards and Laws in the territory.
- (b) If the Products are defective, then the Customer must notify Macrostone in writing within two (2) days of the Delivery. If notice is received within this timeframe, Macrostone may either replace or repair or pay the cost of repair or replacing the defective Products or at its own cost.
- (c) The Customer must provide evidence of the alleged defect including photographic evidence.
- (d) The Customer must return the defective Products to Macrostone. Macrostone is not liable for returning any Products lost in transit.
- (e) Credit notes are offered for any refunds. Refunds are provided using the same method of the original payment method used for the Order.
- (f) Macrostone is not required to provide a refund or replacement if the Products are not defective.
- (g) Colour variation is not considered a fault, due to the fact that natural stone has inherent variations in colour. Colour variation between batches and within batches is fully acceptable. Macrostone will endeavour to provide photos of the latest batch upon request when ordering. This will be a guide only and no guarantee of the exact colour arriving in the container ordered.
- (h) Macrostone will raise a credit memo in favour of the Customer's account which will apply to any returns of goods. If your account is less than the credit memo, then your account will be in credit until your next purchase.
- (i) Short-payments on accounts in anticipation of credit memos will not be allocated onto the Customer's account and not accepted by Macrostone
- (j) The Customer has no right to return any special orders placed with Macrostone. Photos are indicative only and returns will not be accepted if colour fails to match exact requirements or the photos from which the Products were ordered.
- (k) No returns will be accepted if the Customer places an Order based on photo or non-tested products. Macrostone shall not be liable in any way for any defect in goods where an Order is supplied by Macrostone as a 'second' or 'special'.
- (l) Macrostone recommends that the Customer includes a contingency of 3-5% in the Orders for breakage because

the Concrete Masonry and Natural Stone industry allows up to 5% wastage/breakage factor for which Macrostone shall not be liable to replace.

7.3 Costs relating to the return of Products under this clause 7 are payable:

- (a) if the defect is due to Macrostone, by Macrostone and to be transported by our nominated carrier; or
- (b) otherwise, by the Customer.

7.4 The Customer may not withhold any Payment due to Macrostone in respect of any other Products pending the resolution of a claim for a defect.

7.5 Macrostone will not accept notifications under clause 7 in the event of the Customer non-payment of an account.

7.6 If the Products are damaged in the course of being delivered to the Customer:

- (a) The Customer must notify Macrostone of any claim for Products damaged in transit within a reasonable time of delivery; and
- (b) subject to our acceptance of the Customer claim under clause 7, Macrostone will replace the relevant Products.

7.7 The Customer may deliver the all or some of the Products back to Macrostone but Macrostone reserves the right to charge the Customer a minimum charge of \$330+GST or 15% of the Purchase Price whatever may be higher amount or an agreed fee per square metre of tiles, as handling fee and returns fee, which is ever less. Macrostone shall not accept any returns pursuant to this clause which are over 14 days from Delivery. Products returned pursuant to this clause must be in saleable condition. This clause 7.7 does not apply to full container load Orders.

8. PRICES, ORDERS AND PAYMENTS

8.1 The Customer may place an Order with Macrostone for Products at any time. Macrostone reserves the right to accept, reject or vary an Order in its sole discretion or on accept the Order on such terms it deems necessary. On acceptance of an Order, Macrostone will advise the Customer of the processing time and delivery timeframe for the Products.

8.2 Once the Customer has confirmed and accepted the Order or Quote, the Customer can no longer cancel it. However Macrostone reserves the right to accept a request for the cancellation of an Order where the cancellation request is received by Macrostone prior to the Products leaving the port of origin. In the event Macrostone agrees to cancel an Order, the Customer must pay (before the cancellation is effected) a fee specified by Macrostone which is a genuine pre-estimate of its losses, fees and other costs of cancelling the Order.

8.3 The prices for the Products are exclusive of GST, any other taxes, duties, charges, and delivery costs. GST and any other applicable taxes, freight, duties, charges and costs will be payable by the Customer in addition to the price of the Products.

8.4 Prices for freight, postage or delivery fees will be determined once the Order or Quote is confirmed and will be indicated on the Invoice.

8.5 The Customer must pay for all items of the Products ordered in such a manner as Macrostone may reasonably require and in accordance with any direction given by Macrostone. This is an essential term.

8.6 Without limiting the foregoing, Macrostone accepts the following payment methods:

- (a) direct deposit;
- (b) credit card (with an additional 2.5% processing fee); and
- (c) business or company cheque. If Macrostone elects to accept payment by cheque, Macrostone shall be under no obligation to deliver the Products until the cheque has cleared.

9. PAYMENT TERMS

9.1 Payment of the Purchase Price is set out in the credit terms, Quote, Order or Invoice and is a strict time for payment. A failure to pay in accordance with these terms may result in Macrostone:

- (a) refusing to supply the Customer with Products;
- (b) suspending the delivery of the Products to the Customer;
- (c) terminating these terms.

9.2 The Customer must pay GST and any other taxes, duties, and government charges imposed or levied on the Products in connection with this Agreement. Unless otherwise indicated, the Purchase Price and all other consideration for any supply made under this Agreement are exclusive of any GST imposed on the supply.

9.3 The Customer's liability to pay for the Products will not be offset, reduced or affected in any way as a result of any returns of, or credits or rebates relating to the Products unless otherwise agreed to in writing by Macrostone.

9.4 If the Customer fails to make a payment when it is due, Macrostone shall, in addition to all other rights and remedies available under this Agreement at law or in equity, be entitled to charge Default Interest at the rate of 4% per annum plus the interest rate set by the Reserve Bank of Australia.

9.5 Macrostone reserves the right to pass any debts incurred under this Agreement to a collection agency, where by debt collection fees will be added. In addition to any outstanding amounts, the Customer agrees to indemnify Macrostone for all legal costs (on a solicitor and client or full indemnity basis, whichever is greater) and other expenses incurred by Macrostone in connection with a demand, action, or other proceeding (including mediation, out of court settlement or any action taken for recovery of the debts from the Customer) arising out of a breach of the terms of this Agreement, including the failure by the Customer to pay an amount by the due date.

9.6 Default Interest pursuant to clause 9.3 shall be:

- (a) payable on demand; and
- (b) calculated daily from the date the payment was due to the actual date that the payment is made in full.

9.7 Any Payment the Customer makes to Macrostone shall first be credited against any Default Interest accrued pursuant to this clause 9 to the actual date of payment.

9.8 The Customer may not cancel a Product or Service, or any part of it, without our written consent, which may be withheld in Macrostone's absolute discretion.

9.9 Without prejudice to Macrostone's right to refuse consent for the Customer to cancel a Product or Service under clause 9.7, as a condition of giving such consent Macrostone may require that the Customer pay any and all costs reasonably incurred by Macrostone in relation to the cancelled Product or Service or the cancelled part of the Product or Service plus a reasonable profit to the date of cancellation.

9.10 Macrostone may in writing cancel a Product without liability to the Customer (save as required by relevant laws) if:

- (a) Macrostone reasonably forms the opinion that the Customer is insolvent or at material risk of insolvency;
- (b) the Customer fails to pay any amount for the Products or Services on the due date; or
- (c) Macrostone reasonably forms the opinion that supplying Services to the Customer may have a negative impact upon Macrostone's business or commercial reputation or image.

10. DELIVERY OF PRODUCTS

10.1 Once an Order is confirmed, the Customer must allow 24 hours for processing. Macrostone will advise the Customer of the timeframe for Delivery. Transit times are provided by the carrier selected for the Order for Products and excludes weekends and holidays.

10.2 The Delivery Timeframe is an estimate only. Macrostone is not liable to the Customer for any delays in Delivery.

10.3 Proofs of Delivery will be supplied only if requested within 30 days of the original dispatch date.

10.4 At the time the Products are ready to be delivered to the Customer:

- (a) Macrostone will advise the Customer of the Delivery Timeframe for the Products to be delivered to the Customer (**Delivery Date**);
- (b) the Customer must take delivery of the Products on the Delivery Date; and
- (c) the Customer must pay Macrostone all storage and delivery charges where the Customer changes the Delivery Date in advance of Macrostone delivering the Products.

10.5 Upon Delivery of the Products:

- (a) email a signed packing slip to Macrostone within 24 hours of Delivery;
- (b) the Customer must promptly visually inspect the Products;
- (c) within 2 days of such receipt, give Macrostone Notice of any Products that are defective;
- (d) arrange for such Products to be returned to Macrostone at Macrostone's expense; and
- (e) if no Notice is given in that time, the Products will be deemed to be fit for purpose except in respect to any relevant defects not reasonably apparent on inspection.

10.6 If the Customer does not deliver the packing list within 24 hours of Delivery, the Customer is deemed to have accepted the Products as is where is and the Customer shall have no right with respect to defective Products.

11. EXCLUSIONS AND LIMITATIONS

11.1 The exclusions and limitations in this clause 11 are subject to clause 12 (Statutory Rights).

11.2 All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to this Supply Agreement, that are not contained in it, are excluded to the fullest extent permitted by law.

11.3 Any liability arising in relation to Products the subject of the Order or Macrostone supply to the Customer, arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law.

11.4 No warranty is given and Macrostone will not be liable for:

- (f) alterations to Products for which Macrostone is not responsible;
- (g) damage or failure caused by unusual or non-recommended use or application of the Products; or
- (h) loss caused by any factors beyond Macrostone's control.

11.5 Macrostone will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by the Customer or any other person resulting from any act or omission by Macrostone (including breach, termination or non-observance of the terms of an Order or agreement which incorporates this Supply Agreement)

11.6 Macrostone's total liability for breach of these terms or breach of Macrostone's contractual obligations or duties at law or in equity (howsoever arising) is limited at the option of Macrostone to:

- (i) the replacement of the Products or the supply of equivalent Products; or
- (j) the payment of the cost of replacing the Products if Macrostone is able to replace the Products which is not guaranteed

12. STATUTORY RIGHTS

12.1 ACL rights: In circumstances where the Customer is acquiring Products from Macrostone as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, Macrostone acknowledges and agrees that certain statutory guarantees and rights shall apply to the Customer as provided by relevant laws but subject to this Supply Agreement as applicable and where permitted by relevant laws.

12.2 No restriction: Nothing in these terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the Customers of goods and services in various circumstances.

12.3 Unfair contract: If section 23 of the ACL applies to any provisions in this Supply Agreement, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

13. SECURITY INTEREST AND TITLE

13.1 This clause 13 sets out the Security Agreement between Macrostone and The Customer.

13.2 The Customer (**Grantor**) grant to Macrostone (**Secured Party**) a Purchase Money Security Interest (**PMSI**) in the Products

- (Collateral) as security for all or part of the Payment for the Products.
- 13.3 The Secured Party's security interest attaches to the Collateral by virtue of the Customer's possession of the Products as bailee under clause 12.7.
- 13.4 Macrostone may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 13.3.
- 13.5 Until full title in the Products has passed to the Customer, the Customer will ensure that the Products are identifiable and distinguishable:
- (a) from any other goods that may be in The Customer's possession; and
 - (b) as to each particular Invoice of Products.
- 13.6 Macrostone will retain absolute title over the Products until:
- (c) Macrostone has received Payment in full in respect of the Products; or
 - (d) Macrostone registers a financing statement as described in clause 12.4.
- 13.7 After delivery of the Products, until the full Payment has been made the Customer shall possess the Products as bailee only.
- 13.8 Until Payment in full for the Products has been received by Macrostone, Macrostone may, without notice, seize the Products if:
- (e) a Default Event occurs; or
 - (f) The Customer is in breach of this Supply Agreement.
- 13.9 For the purposes of carrying out seizure under clause 13.8, Macrostone may without notice, enter the Customer's premises and seek any or all remedies provided under Chapter 4 of the PPSA and any other remedies provided at law or in equity or otherwise.
- 13.10 The Customer may only sell all or any of the Products in respect of which full Payment has not been received to a third party if:
- (g) Macrostone have not exercised our right to seize the Products under clause 13.8;
 - (h) the sale is a bona fide transaction at market value in the ordinary course of business; and
 - (i) all proceeds of sale of those Products is:
 - (i) immediately paid to Macrostone; or
 - (ii) held on trust for Macrostone in a separate account, payable immediately on demand.
- 13.11 Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on Macrostone in the Customer's favour.
- 13.12 The Customer agree to waive the Customer's right to receive from Macrostone a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Supply Agreement and this Security Agreement.
- 13.13 The Customer shall immediately notify Macrostone in writing of any change of name.
- 13.14 The Customer acknowledge receipt of a copy or due notice of this Supply Agreement and this Security Agreement.
- 14. INDEMNITY**
- The Customer shall indemnify Macrostone against any loss, costs, expenses, demands or liability, (on a full indemnity basis) whether direct or indirect, arising out of a breach of this Agreement.
- 15. LIMITATION OF LIABILITY**
- 15.1 To the fullest extent permitted by law, the Customer's liability to the Manufacturer (whether such liability is in contract, tort, negligence or for breach of any warranty, representation or statute) for any services provided by or on behalf of Company, or for any act or omission done in connection with the subject matter of this Agreement, will be limited in aggregate to an amount equal to any outstanding Purchase Price as at the date in respect of which the liability arose.
- 15.2 Notwithstanding the foregoing, in no circumstances will the Customer be liable for any loss of interest, revenue, profit or any data, or for any consequential, indirect, incidental or special damages suffered by the Manufacturer or any third party arising from or relating to the subject matter of this Agreement.

- 15.3 The Customer acknowledges and agrees that the majority of Products are quarried natural stone and consequently there may be variations in colour between batches. It is not possible to determine what the Products' reaction will be to different environments and therefore Macrostone is unable warrant consistency in colour due. Such variations do not constitute a defect and are therefore not covered by any warranty.
- 15.4 Any presentation, promise, statement or description by Macrostone or any employee, agent or dealer of Macrostone is expressly excluded and the Customer acknowledges that it has relied solely upon its own inspection and skill and judgment and not by reason of any such representation, promise, statement or description. All photographs, weights, illustrations, shade descriptions, nominal sizes and any other particulars given in or accompanying a quotation, provided as a sample or contained in descriptive literature are approximate and indicative only and deviations therefrom shall not vitiate the contract or be made the basis of any claim made against Macrostone. Colour, shade and features are subject to some variation. Fixing of the product constitutes acceptance of the product. No claims in respect of variation or noticeable defects will be accepted after tiles have been fixed.
- 15.5 Macrostone accepts no responsibility whatsoever for errors in dimensions, quantities, shade variations, specifications or otherwise where orders for any Products are placed with Macrostone by the Customer otherwise than in writing. It is the Customers responsibility to ensure the entire product supplied is consistent with that ordered prior to any installation taking place. This includes checking for any batch variations. No claims will be accepted for variations in colour, shade, pattern or veining in natural stone as these are all characteristics of the product.
- 15.6 Macrostone accepts no responsibility for optical hazing. Polished porcelain is prone to optical hazing which appears as a hazy / smoky effect in certain light conditions. The Customer is advised to lay a sample of the tile loose on site and view the tile at different times over 24 hours to satisfy themselves with the tile appearance prior to installation.
- 15.7 Where sealing is recommended, no liability will be accepted by Macrostone where this is not carried out as recommended. Macrostone recommends all stone tile Products be sealed as protection against everyday spills and soiling. An impregnating sealer will not protect calcium based stones (marble, limestone, travertine, bluestone) against etching or surface degradation by acidic, strong alkaline solutions, corrosive or abrasive products. An impregnating sealer will not protect against surface abrasion or regular wear and tear.
- 16. TERMINATION**
- 16.1 Customer's Breach
- Macrostone is entitled to terminate this Agreement by giving 14 days' prior Notice to that effect to the Customer if any of the following events occur:
- (a) The Customer fails to pay any amount owing to Macrostone within 7 days of the date of a written request by Macrostone to make payment.
 - (b) The Customer becomes insolvent.
 - (c) The Customer commits any breach of this Agreement and fails to remedy that breach within 30 days of the date of a written request from Macrostone to do so.
 - (d) The Customer fails to follow any reasonable and lawful direction given by Macrostone for the purposes of safe guarding Macrostone's Intellectual Property or Confidential Information.
 - (e) The Customer breaches any term of this Agreement that is expressed to be an essential term.
- 16.2 Notwithstanding termination of this Agreement, the obligations therein will continue to be binding on the Customer and fully enforceable in respect to the rights and obligations of each Party relating to:
- (a) the payment of any sum;
 - (b) Product warranties;
 - (c) Confidential Information;
 - (d) return of property and transfer of Intellectual Property; and
 - (e) obligations in this Clause and otherwise in the Agreement that are expressly intended to apply after termination.
- 17. RELATIONSHIP**

17.1 The Parties acknowledge that they are not in partnership, there is no joint venture between them or franchise arrangement, and that the only relationship between them is that of service provider (in the case of Macrostone) and as customer or purchaser (in the case of the Customer) in respect of the Products on the terms in this Terms of Trade. Neither Party may claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.

17.2 It is expressly agreed that nothing in this Agreement will give rise to any fiduciary relationship between Macrostone and the Customer and neither Party owes any fiduciary duty to the other in respect of its conduct.

17.3 It is expressly acknowledged that nothing in this Agreement confers upon Macrostone the right to direct the Customer to conduct its business in particular way. The Customer acknowledges that it has not paid any premium or other sum as consideration for entering into this Agreement nor has it been required as a precondition to entering into this Agreement to purchase any Products or pay for any training or other services.

18. DISPUTE RESOLUTION

18.1 The Parties will comply with the following dispute resolution procedure:

- (a) Where a dispute arises between the Parties, the complainant Party will set out in writing and in English what it regards the dispute to be, informing the respondent Party:
- (i) the nature of the dispute; and
 - (ii) what outcome the complainant wants; and
 - (iii) what action the complainant Party requires in order to settle the dispute.
- (b) Both Parties will make every effort to resolve the dispute through negotiation and will in so doing act in good faith.

18.2 For mediation under this Agreement:

- (a) if the Parties cannot agree under clause 14.1(b) within 21 days, either Party may refer the matter to a mediator; and
- (b) if the Parties cannot agree about who should be the mediator, either party may ask the Chief Executive Officer (at that time) of the Australian Commercial Disputes Centre to appoint a retired Judge or court officer or practicing barrister of at least 10 years admission to the Bar to act as the mediator and that mediator will act as mediator of the dispute;
- (c) the mediator may decide the time and place for mediation;
- (d) the Parties or their legal representative(s) must attend the mediation and try in good faith to resolve the dispute through meditation;
- (e) the Parties are equally liable for the costs of mediation and the costs of the mediator under this part unless they agree otherwise. The Parties must pay their own costs for attending at or being represented at the mediation;
- (f) nothing in this clause affects the right of a Party to take legal proceedings under this Agreement, if mediation fails to resolve the dispute;

18.3 Nothing contained in the dispute resolution procedures above will deny or delay and Party seeking immediate injunctive relief from an appropriate Court where in the reasonable opinion of the Party the failure to obtain such relief would cause irreparable damage to the Party concerned.

18.4 These dispute resolution procedures will not apply to events giving rise to a right of termination of this Agreement where there is no legitimate dispute as to the occurrence of that event.

19. GENERAL

19.1 Care and Laying Guide

- (a) The Customer must comply with Macrostone's care and laying guide, which the Customer acknowledges it has received and is available on the Macrostone website, to ensure that the products are being used in terms of the guide.
- (b) It is the Customer's responsibility to ensure that the Customer or the Customer's chosen third party who will lay the Products, follow the recommended laying and care guidelines.

- (c) If the Customer or the Customer's client does not install a Product strictly in accordance with the guidelines, in full, both during and after the installation then the Products are not covered by any warranty by Macrostone. This includes, and is not limited to, variation in size and thickness of the stone, changes in the appearance or colour of the stone, cracking, flaking or peeling of the stone.

19.2 Variations

This Agreement may only be varied in writing signed by both the Parties.

19.3 Waiver

- (d) The waiver by any Party of any right or entitlement or to claim in respect of any breach of this Agreement must be in writing signed by the Party so waiving. No purported waiver that is not in writing and signed by the waiving Party will have any effect whatsoever.

- (e) A waiver will not preclude that waiving Party from relying upon any such right or entitlement arising in the future or to claim in respect of any subsequent breach of this Agreement even if that future right, entitlement or subsequent is the same as that previously waived.

19.4 Notices

- (a) All Notices or requests given by either Party to the other are deemed to have been properly given if posted by mail or emailed to the email addresses set out in Item 1 of the Reference Schedule.
- (b) Any Notice or request sent by email will be deemed served on the day after being emailed. An email record will be conclusive evidence of the date of emailing. Any Notice or request sent by mail will be deemed served 14 days after the date of posting, not including the date of posting.
- (c) Any Notice or request sent by a Party to the other must be signed by a director or officer of the sending Party or appear on its face (where an email) to be so signed.
- (d) All Notices must be given in English.
- (e) Either Party may change its details for service of a Notice by serving a Notice on the other party setting out its new address for service or other contact address.

19.5 Confidentiality of Agreement

All terms of this Agreement shall be kept strictly confidential as between the Parties. None of the Parties to this Agreement shall disclose any terms or information relating to, received, or developed in the course of this Agreement relating to the Agreement or the business of either Party without prior written consent of the other party.

19.6 Force Majeure

Except for obligations to make payment, delay or non-performance by any Party will be excused if such delay or non-performance is due to an event or events outside the Party's reasonable control, including but not limited to:

- (a) acts of god;
- (b) natural disasters;
- (c) sabotage;
- (d) accident;
- (e) riot;
- (f) shortage of supplies, equipment, and materials;
- (g) strikes and lockouts;
- (h) civil unrest; or
- (i) malicious damage.

19.7 Severability

If any clause of this Agreement is invalid under any applicable such Law, the clause will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid clause will be deleted from the Agreement and the remaining clauses will remain in full force and effect.

19.8 Counterparts

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement.

19.9 Entire Agreement

- (a) This Agreement represents the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, representations and warranties relating to the subject matter of this Agreement.
- (b) Neither Party has relied on or been induced by any representations or promises made to it prior to entering into this Agreement in reaching its decision to enter into this Agreement on these terms.

19.10 Amendment of terms

Macrostone reserves the right to amend these terms from time to time but no variation to these terms will apply to any outstanding Order. Macrostone will provide the Customer with reasonable notice of the variations to these terms.

19.11 Governing Law and Jurisdiction

It is agreed by the Parties that this Agreement is to be construed in accordance with the Laws of Queensland and each Party covenants that it submits to the jurisdiction of the Courts of Queensland is located for the resolution of any dispute under the Agreement.

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