

## TERMS AND CONDITIONS OF TRADE

To the fullest extent legally permissible all dealings between LS and any Customer relating to any products ("Products") and/or services are subject to the following terms and conditions of trade (these Terms) unless otherwise agreed in writing:

1. **Payments** to be by cash, cheque, bank cheque or EFTPOS and without deduction within our trading terms set out in the quotation unless otherwise agreed. If LS receives or recovers money in respect of debts of the customer or anyone else, LS may use it to pay off whichever part of those debts it chooses.
2. **Interest** will be charged on overdue accounts at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 4%.
3. **Property:** Even if LS grants any credit facility and/or time to pay:
  - a) property in Products shall not pass to the Customer until payment in full and of all monies owed to LS and LS reserves the right to take possession and dispose of Products as it sees fit at any time until full payment;
  - b) the Customer grants permission to LS to enter any property to recover the Products and with such force as is necessary;
  - c) the Customer agrees that a certificate purporting to be signed by an officer of LS identifying Products as unpaid for shall be conclusive evidence that Products have not been paid for and of LS's title to those Products;
  - d) upon sale or disposition of any Products prior to full payment the Customer agrees to deposit all proceeds in a separate bank account, not mix such proceeds with any other monies and account to LS for the same as fiduciary and bailee;
  - e) without derogating from LS's rights as a creditor of the Customer or arising under these Terms if Products are used in any construction, building, fabrication and/or manufacturing process ("the Process") which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any Products used in the Process as invoiced to the Customer by LS UPON TRUST for LS until payment in full for those Products and all monies owed to LS;
  - f) Products shall be deemed to be dealt with by the Customer on a "first in first out" basis at all times.
4. **Limitation of Liability:** The Customer agrees:
  - a) to limit any claim it makes to the cost of replacement of Products or of acquiring equivalent products;
  - b) that LS shall not be liable for any loss or expense arising after seven days from delivery (or at all once Products have been unpacked, affixed and/or otherwise used or applied) after which there shall be deemed to be unqualified acceptance;
  - c) that to the fullest extent legally permissible LS shall not be liable for any damages for personal injury, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly; and
  - d) that to the fullest extent legally permissible no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to, otherwise rotating to or binding upon LS other than these Terms is made or given by or on behalf of LS other than by these Terms save and except to the extent otherwise required by law.
5. **Exclusions:** The Customer agrees that:
  - a) no dealing between LS and the Customer shall be or be deemed to be a sale by sample;
  - b) the Customer shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given by or on behalf of LS shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or adviser nor to have been relied upon;
  - c) Products are sold subject to each and every manufacturer's trading terms and conditions and are protected by each and every manufacturer's warranty and LS shall not be liable to the extent that any manufacturer is liable under a manufacturer's warranty unless otherwise required by law; and
  - d) LS shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Products and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at LS prior to the entry by LS into any relevant sale contract.
6. **Cancellations and Returns:** The Customer agrees that:
  - a) the Customer shall at no time cancel the whole or part of any order placed without LS's prior approval in writing;
  - b) the Customer shall not return Products without LS's prior written approval and if Products are not in brand new and unused condition with undamaged packaging and if three weeks or more have passed since the earliest delivery date;
  - c) LS may otherwise elect to take back Products in saleable condition on such terms as LS considers to be reasonable;
  - d) the Customer shall in all cases pay to LS a restocking fee of a minimum 15% of the gross invoice value of all returns;
  - e) notwithstanding any other provisions of these Terms the Customer shall not return Products without first providing to LS an original invoice as proof of purchase; and
  - f) notwithstanding any other provisions of these Terms the Customer shall not return any Products which have been custom made, custom cut, custom processed or custom acquired.
7. **Orders:** The Customer agrees that:
  - a) each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due;
  - b) when any order is placed the Customer shall inform LS of any facts which might reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute an inequality of bargaining position, the taking of an unfair advantage of LS and to be unconscionable, misleading and deceptive;
  - c) in respect of custom made, custom cut, custom process or custom acquired Products, a minimum deposit not exceeding 50% of the value of the order will be required to be paid by the Customer to LS prior to the ordering of stock or the holding of stock on hand for more than seven (7) days; and
  - d) if any order is not collected by the Customer or delivered at the Customer's direction within 90 days of the Customer placing the order with LS, the order shall be deemed to be cancelled, the Customer's deposit forfeited absolutely to LS and the Products returned to stock.
8. **Minimum Invoice Policy and Purchase Price:** The Customer agrees that:
  - a) the Customer shall at all times and in all respects comply with LS's minimum invoice policy as may at any time and from time to time apply on such terms as LS considers to be reasonable; and
  - b) all sales are otherwise made by LS at its ruling price at the time of delivery and on such other terms as LS considers to be reasonable.
9. **Delivery:**
  - a) LS accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability and at the Customer's cost and risk in all things;
  - b) LS shall not be liable for delay or any failure or inability to deliver;
  - c) Products shall be deemed to be delivered as soon as they are ready for delivery at which time risk shall be deemed to have passed to the Customer; and
  - d) LS may charge for frustrated delivery to cover LS's reasonable expenses.
10. **Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon LS shall apply and the parties agree that these terms and conditions shall prevail over any other document.
11. **Recovery Costs:** The Customer shall pay all costs and expenses (including legal costs on an indemnity basis) incurred by LS and/or its agents in respect of the Customer whether relating to any debt, possession of Products and/or otherwise.
12. **Customer Restructure:** the Customer shall notify LS in writing of any change in its structure and/or management including any change in director, shareholder and/or management and any change in partnership or trusteeship within seven days of the date of any such change.
13. **Jurisdiction:** The Customer agrees that all contracts made with LS shall be deemed to be made in the State nominated by LS and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by LS in the capital city of that State.
14. **Credit Limit** The grant of any credit facility or nomination of any credit limit is an indication only of LS's intention at the time. LS may vary and/or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.
15. **Security for Payment:** As security for payment to LS of all monies payable by the customer, the customer does hereby charge in favour of LS all of the customer's interest in freehold and leasehold property both current and later acquired. To protect LS's security interest in the goods until payment and to secure payment to it, LS may choose to register the agreement with you under the Personal Property Security Act 2009. You agree to do all things necessary to facilitate such registration.
16. **Forward Orders:** The Customer agrees:
  - a) to pay for so much of any forward order as is from time to time invoiced by LS;
  - b) that no delay or failure to fulfil any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment; and
  - c) to pay any demurrage and/or other costs and expenses of LS in handling and/or holding Products once ready for delivery.
17. **Force Majeure:** LS shall not be or be deemed to be in default or breach of any contract as a result of Force Majeure. Force Majeure shall include any cause beyond the reasonable control of LS including strikes and lockouts.
18. **Attornment:** For the purpose of giving effect to the Customer's obligations under these Terms (in particular clause 15 of these Terms) the Customer hereby irrevocably appoints the Credit Manager (or like equivalent) for the time being of LS as the Customer's attorney in all things.
19. **Notification of Defects:**
  - a) The Customer must notify LS in writing of any deficiency or defect in the product or workmanship within seven days of the date of the relevant invoice;
  - b) Upon receipt of notification in accordance with Condition 19 a) LS shall within a reasonable period of time send a representative to view the alleged deficiency or defect and if no such deficiency or defect is identified by LS then the Customer shall be liable to pay to LS its current callout charge.
20. **Progress Invoicing:** LS reserves the right to render invoices from time to time throughout the course of any particular job at its absolute discretion. The Customer shall not be entitled to refuse to pay all or part of that invoice on the basis that goods and services to that value have not been supplied by LS. LS shall not be obliged to complete any job whilst and so long as any monies are owed to it by the Customer whether in respect of that particular job or otherwise.
21. **Quotations:**
  - a) The Customer must sign, date, complete and return each and every written quotation to LS by way of acceptance;
  - b) It shall be the sole responsibility of the Customer to ensure that each and every detail on the quotation is accurate;
  - c) Each quotation is valid for thirty days only;
  - d) All quotations are based on plans and information supplied to LS by the Customer;
  - e) If a price rise occurs prior to acceptance to any quotation then LS will issue the Customer with a new quotation;
  - f) Any and all of the Quotation Conditions set out in any quotation shall be deemed to form part of these Terms and Conditions of Trade and shall be read subject to these Terms and Conditions of Trade.
22. **Disputes:** The Customer agrees to pay into an interest-bearing trust account in the joint names of LS and the Customer any amount claimed by LS as a condition precedent to any dispute by the Customer of any such claim on the basis that upon resolution of the dispute the trust fund and any interest shall be dispersed according to the resolution. This clause shall operate as a bar to any defence or claim by the Customer until fully complied with.
23. **Abnormal Payments:** The Customer agrees to pay an administration fee of 2% (calculated on the amount paid) on any payment which is made other than as provided in clause 1 of these Terms which fee is agreed as the liquidated cost of processing such abnormal payments.
24. **Defaults:** Upon default or breach of these Terms by the Customer LS may inter alia retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and/or at LS's election take immediate possession of Products not paid for without prejudice to any other rights LS may have and without LS being liable in any way to any person.
25. **Severability:** Any part of these Terms being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.
26. **Goods and Services Tax (GST):** All monies payable to LS and any other consideration for any other "taxable supply" (within the meaning of A New Tax System (Goods and Services Tax) Act 1999 and associated legislation as amended from time to time) shall unless LS otherwise directs be deemed at all times to be exclusive of GST and/or any other applicable taxes, government charges, levies and/or imposts of any kind whatsoever - and all of which must be paid by the Customer to LS as and when and in such manner as LS reasonably requires.
27. **Warranty Policy:** Save and except as required by law no warranty is given where LS is not the manufacturer of Products other than the warranty offered by the manufacturer and to the fullest extent legally permissible LS's liability shall in all cases be strictly limited in accordance with clauses 4 & 5 of these Terms. Where LS is or might be deemed to be a manufacturer then the LS Standard Warranty applies for the period applicable to specific Products. Details of the LS Standard Warranty and the schedule of periods applicable are available upon request from LS's Head Office at 24 Bancall Street, Campbellfield, Victoria 3061.
28. **Credit Information:** The Customer irrevocably authorises LS and its servants and agents to make such enquiries from time to time as LS may deem necessary to obtain information and/or to investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit reporting agency, any land titles office, the ASIC, ITSA and/or any similar body and/or related information service ("The Sources") and including personal credit and consumer credit information and any property, business and/or solvency information. The Customer by this clause irrevocably authorises the Sources to disclose anything about the Customer which is in the Sources' possession and the Customer agrees that LS may disclose any information it has about the Customer to any interested person (subject only to any obligations LS may have under the Privacy Act 1988 (Cth)).
29. **Notice:** The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by LS and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of trade which may be adopted by LS immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied. These terms as updated are available at [www.luxurystone.com.au](http://www.luxurystone.com.au).
30. **Quantity & Quality:** The Customer agrees and acknowledges that:
  - a) in the absence of any agreement to the contrary no refunds will be given in respect of any Products over ordered by the Customer whatsoever;
  - b) it is the Customer's responsibility to order the correct amount of the Products;
  - c) short ordering and wastage are the sole responsibility of the Customer;
  - d) any calculation of Products requirement made by LS is an estimate only and LS shall not be responsible for any under or over ordering. If the Customer is in doubt then it is the Customer's responsibility to obtain an expert calculation in respect of its Products requirement;
  - e) any Products purchased as "seconds stock" may contain breakages, chipping, drying cracks, discolouration and other defects;
  - f) no refunds or replacements whatsoever will be made in respect of seconds stock;
  - g) it is the Customer's responsibility to inspect the Products prior to installation for any damage or defect and LS shall not be responsible for the costs of the removal of any Products laid or otherwise used by the Customer which were not properly inspected by the Customer.
  - h) Natural stone has been formed by nature and is not manufactured and accordingly colour, texture, grain and other natural aspects of the Products may vary from any sample or visual depiction of the Products.