Project Stone Australia Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "Project Stone" means Project Stone Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Project Stone Australia Pty Ltd.

1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Project Stone 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 a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.

1.4 "Goods" means all Goods or Services supplied by Project Stone 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).

1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer 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.

1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular Customer and website, and can be accessed either by the web server or the Customer's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the 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 ordering Goods via the website.**

1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Project Stone and the Customer in accordance with clause 7 below.

1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

2.1 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.

2.2 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.

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

2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Project Stone and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Project Stone reserves the right to refuse delivery.

2.6 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Project Stone reserves the right to vary the Price with alternative Goods as per clause 7.2, subject to prior confirmation and agreement of both parties. Project Stone also reserves the right to halt all Services until such time as Project Stone and the Customer agree to such changes. Project Stone shall not be liable to the Customer for any loss or damage the Customer suffers due to Project Stone exercising its rights under this clause.

2.7 Any advice, recommendation, information, assistance or service provided by Project Stone in relation to Goods or Services supplied is given in good faith, is based on Project Stone's own knowledge and experience and shall be accepted without liability on the part of Project Stone and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.

2.8 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Project Stone's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

3.1 The Customer acknowledges that Project Stone shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Project Stone, that person shall have the full authority of the Customer to order any Services, Goods and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Project Stone for all additional costs incurred by Project Stone (including Project Stone's profit margin) in providing any Services, Goods or variation/s requested thereto by the Customer's duly authorised representative.

4. Distribution of Goods via an Approved Fabricator

4.1 The Customer agrees that until they are authorised as a fabricator by Project Stone, (and hereinafter the Customer shall be referred to as "Fabricator" for the purposes of this clause) the Fabricator shall not be able to sell the Goods on as a distributor for Project Stone or represent to any third parties that the Fabricator is in any way acting for Project Stone. Project Stone shall not accept responsibility or agree to be bound in any way by any contracts with third parties to whom the Fabricator is a party.

4.2 The Fabricator shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities including any work health and safety laws and or guidelines of Safework Australia and guidelines of the manufacturer, relating to stone slab products. The Fabricator is to ensure that they are trade qualified and have the suitable equipment to process and handle stone slab products.

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4.3 Orders from a Fabricator are accepted on the basis that;
(a) unless otherwise agreed by prior approval between Project Stone and the Fabricator, Goods may only be resold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale, and

4.4 Any default of clause 4. may at Project Stone's sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.

4.5 Project Stone has sole discretion on which Goods are made available to any approved Fabricator and Project Stone does not guarantee continuing supply of any specific Goods.

5. Errors and Omissions

5.1 The Customer acknowledges and accepts that Project Stone 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 Project Stone 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 Project Stone 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 Project Stone; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

6. Change in Control

6.1 The Customer shall give Project Stone 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 Project Stone as a result of the Customer's failure to comply with this clause.

7. Price and Payment

7.1 At Project Stone's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by Project Stone to the Customer; or
(b) the Price as at the date of Delivery of the Goods according to Project Stone's current price list; or
(c) Project Stone's Price on purchase orders (subject to clause 7.2) which will be valid only on acceptance of a purchase order by Project Stone; or
(d) Project Stone's quoted price in writing (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

7.2 Project Stone reserves the right to change the Price:
(a) if a variation to Project Stone's quotation and/or a purchase order is requested or required (including as to the nature, size, weight or quantity of the Goods) and location of the collection and/or delivery address, distance from the collection address to the delivery address, facilities available for loading or unloading, weather conditions or delays beyond the control of Project Stone, delivery times or dates, or otherwise, etc.); or
(b) to reflect any increases to Project Stone in the cost of performing the carriage of the Goods, which are beyond the reasonable control of Project Stone (including, without limitation, increases in the cost of labour, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs, etc.); or
(c) if during the course of the Services, the Goods cease to be available from Project Stone's third party suppliers, then Project Stone reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties.

7.3 Variations will be charged for on the basis of Project Stone's quotation and/or a purchase order, and will be detailed in writing, and shown as variations on Project Stone's invoice. The Customer shall be required to respond to any variation submitted by Project Stone within ten (10) working days. Failure to do so will entitle Project Stone 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.

7.4 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 5%; and
(b) the Price shall be adjusted pro rata to the discrepancy.

7.5 At Project Stone's sole discretion, a non-refundable deposit may be required and the following conditions may apply for non-stock products purchased, where production has not yet commenced and where Project Stone is required to pay the full value of the product prior to it being shipped, a thirty percent (30%) of the contract Price is payable up front and considered a non-refundable deposit.

7.6 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Project Stone, which may be:
(a) on or before delivery of the Goods;
(b) the date which shall be either seven (7) or fourteen (14) days following the date of any invoice given to the Customer by Project Stone; or
(c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
(d) the date specified on any invoice or other form as being the date for payment; or
(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Project Stone.

7.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Project Stone.

7.8 Project Stone may in its discretion allocate any payment received from the Customer towards any invoice that Project Stone determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Project Stone may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Project Stone, payment will be deemed to be allocated in such manner as preserves the maximum value of Project Stone's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

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7.9 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 Project Stone nor to withhold payment of any invoice because part of that invoice is in dispute.

7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Project Stone an amount equal to any GST Project Stone must pay for any supply by Project Stone 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.

8. Delivery of Goods

8.1 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 Project Stone's address; or
(b) Project Stone (or Project Stone's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

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

8.3 Project Stone is authorised to deliver the Goods at the address given to Project Stone by the Customer for that purpose and it is expressly agreed that Project Stone shall be taken to have delivered the Goods in accordance with this Contract if at that address Project Stone obtains from any person a receipt or a signed delivery docket for the Goods.

8.4 Project Stone 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.

8.5 Any time specified by Project Stone for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Project Stone will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Project Stone shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Risk

9.1 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.

9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Project Stone is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Project Stone is sufficient evidence of Project Stone's rights to receive the insurance proceeds without the need for any person dealing with Project Stone to make further enquiries.

9.3 If the Customer requests Project Stone to leave Goods outside Project Stone'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.

9.4 The Customer acknowledges that :
(a) granite, marble, all natural stone and engineered stone are products of nature. These have naturally occurring variations in colour and shade tones, markings, and veining may vary from colour samples provided. Project Stone gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. Project Stone will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied; and
(b) for a long lasting finish, granite and marble should be treated or sealed with appropriate sealants at regular intervals. The intervals will depend on the type of stone and sealer applied.
(c) specialist advice is recommended regarding sealing and cleaning products used on natural and engineered stone as commercial available cleaning and sealing products may not be suitable.
(d) Goods supplied may:
(i) fade or change colour over time; and
(ii) crack or split; and
(iii) expand, contract or distort as a result of exposure to heat, cold, weather; and
(iv) mark or stain if exposed to certain substances; and
(v) be damaged or disfigured by impact or scratching.

9.5 Project Stone shall not be liable for any loss or damage to the Goods after delivery that is caused by any tradesmen, other third parties and/or the Customer (including but not limited to safety and health precautions that are required at the time the Goods are installed and/or cut etc.)

9.6 Project Stone gives no guarantee (expressed or implied):
(a) against cracking, chipping, pitting or scratching that may occur that is beyond Project Stone's control due to the nature of the product at the time of cutting and/or installation; and
(b) that natural and engineered stone slabs supplied by Project Stone constitute a useable area.

10. Dimensions, Plans and Specifications

10.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods, unless Project Stone and the Customer agree otherwise in writing.

10.2 Project Stone shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.

10.3 If the giving of an estimate or quotation for the supply of Goods (including but not limited to measurements of random natural and engineered stone slabs) involves Project Stone estimating measurements and quantities which may be supplied as a guide only, it shall be the responsibility of the Customer to verify the accuracy of Project Stone's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.

10.4 Should the Customer require any changes to Project Stone's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

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11. Access

11.1 The Customer shall ensure that Project Stone has clear and free access to effect delivery of the Goods. Project Stone shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Project Stone.

12. Compliance with Laws

12.1 The Customer and Project Stone 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 relating to building/construction sites and any other relevant safety standards or legislation.

12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services..

13. Title

13.1 Project Stone and the Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid Project Stone all amounts owing to Project Stone; and
(b) the Customer has met all of its other obligations to Project Stone.

13.2 Receipt by Project Stone 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.

13.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 13.1:
(a) the Customer is only a bailee of the Goods and must return the Goods to Project Stone on request;
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Project Stone and must pay to Project Stone 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 Project Stone and must pay or deliver the proceeds to Project Stone 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 Project Stone and must sell, dispose of or return the resulting product to Project Stone as it so directs;
(e) the Customer irrevocably authorises Project Stone to enter any premises where Project Stone believes the Goods are kept and recover possession of the Goods;
(f) Project Stone 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 Project Stone;
(h) Project Stone may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 2009 ("PPSA")

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

14.2 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 and/or collateral (account) – being a monetary obligation of the Customer to Project Stone for Services – that have previously been supplied and that will be supplied in the future by Project Stone to the Customer.

14.3 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 Project Stone 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 14.3(a)(i) or 14.3(a)(ii);
(b) indemnify, and upon demand reimburse, Project Stone 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 Project Stone;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Project Stone;
(e) immediately advise Project Stone of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

14.4 Project Stone 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.

14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

14.7 Unless otherwise agreed to in writing by Project Stone, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

14.8 The Customer must unconditionally ratify any actions taken by Project Stone under clauses 14.3 to 14.5.

14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

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15. Security and Charge

15.1 In consideration of Project Stone 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, 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).

15.2 The Customer indemnifies Project Stone from and against all Project Stone's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Project Stone's rights under this clause.

15.3 The Customer irrevocably appoints Project Stone and each director of Project Stone as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

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

16.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Project Stone 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 Project Stone to inspect the Goods.

16.2 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**).

16.3 Project Stone acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Project Stone makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Project Stone's liability in respect of these warranties is limited to the fullest extent permitted by law.

16.5 If the Customer is a consumer within the meaning of the CCA, Project Stone's liability is limited to the extent permitted by section 64A of Schedule 2.

16.6 If Project Stone is required to replace the Goods under this clause or the CCA, but is unable to do so, Project Stone may refund any money the Customer has paid for the Goods.

16.7 If the Customer is not a consumer within the meaning of the CCA, Project Stone'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 Project Stone at Project Stone's sole discretion;

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

(c) otherwise negated absolutely.

16.8 Subject to this clause 16, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 16.1; and

(b) Project Stone 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.

16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, Project Stone 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;

(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 Project Stone;

(e) fair wear and tear, any accident, or act of God.

16.10 Project Stone may in its absolute discretion accept non-defective Goods for return in which case Project Stone may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

16.11 Notwithstanding anything contained in this clause if Project Stone is required by a law to accept a return then Project Stone will only accept a return on the conditions imposed by that law.

16.12 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

17. Intellectual Property

17.1 Where Project Stone has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Project Stone. Under no circumstances may such designs, drawings and documents be used without the express written approval of Project Stone.

17.2 The Customer warrants that all designs, specifications or instructions given to Project Stone will not cause Project Stone to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Project Stone against any action taken by a third party against Project Stone in respect of any such infringement.

17.3 The Customer agrees that Project Stone may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Project Stone has created for the Customer.

18. Default and Consequences of Default

18.1 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 Project Stone's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

18.3 Further to any other rights or remedies Project Stone may have under this Contract, if a Customer has made payment to Project Stone, 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 Project Stone under this clause 18 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.

18.4 Without prejudice to Project Stone's other remedies at law Project Stone shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Project Stone shall, whether or not due for payment, become immediately payable if:

(a) any money payable to Project Stone becomes overdue, or in Project Stone'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 Project Stone;
(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.

19. Cancellation

19.1 Without prejudice to any other remedies Project Stone may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Project Stone may suspend or terminate the supply of Goods to the Customer. Project Stone will not be liable to the Customer for any loss or damage the Customer suffers because Project Stone has exercised its rights under this clause.

19.2 Project Stone 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 Project Stone shall repay to the Customer any money paid by the Customer for the Goods. Project Stone shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Project Stone as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Dispute Resolution

20.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration

21. Privacy Policy

21.1 All emails, documents, images or other recorded information held or used by Project Stone is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. Project Stone 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"). Project Stone acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Project Stone that may result in serious harm to the Customer, Project Stone 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.

21.2 Notwithstanding clause 21.1, privacy limitations will extend to Project Stone in respect of Cookies where transactions for purchases/orders transpire directly from Project Stone's website. Project Stone 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 Customer type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to Project Stone when Project Stone sends an email to the Customer, so Project Stone may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via Project Stone's website.

21.3 The Customer agrees for Project Stone to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Customer in relation to credit provided by Project Stone.

21.4 The Customer agrees that Project Stone may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

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(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.

21.5 The Customer consents to Project Stone being given a consumer credit report to collect overdue payment on commercial credit.

21.6 The Customer agrees that personal credit information provided may be used and retained by Project Stone 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.

21.7 Project Stone 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.

21.8 The information given to the CRB may include:
(a) Personal Information as outlined in 21.3 above;
(b) name of the credit provider and that Project Stone 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, 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 Project Stone has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of Project Stone, 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).

21.9 The Customer shall have the right to request (by e-mail) from Project Stone:
(a) a copy of the Personal Information about the Customer retained by Project Stone and the right to request that Project Stone correct any incorrect Personal Information; and
(b) that Project Stone does not disclose any Personal Information about the Customer for the purpose of direct marketing.

21.10 Project Stone will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

21.11 The Customer can make a privacy complaint by contacting Project Stone via e-mail. Project Stone will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Service of Notices

22.1 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.

22.2 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.

23. Trusts

23.1 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 Project Stone may have notice of the Trust, the Customer covenants with Project Stone 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 Project Stone (Project Stone 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.

24. Building Industry Fairness (Security of Payment) Act 2017

24.1 At Project Stone's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.

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24.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.

25. General

25.1 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.

25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which Project Stone has its principal place of business, and are subject to the jurisdiction of the courts in Brisbane, Queensland.

25.3 Subject to clause 16, Project Stone 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 Project Stone of these terms and conditions (alternatively Project Stone's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

25.4 Project Stone may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

25.5 The Customer cannot licence or assign without the written approval of Project Stone.

25.6 The Customer agrees that Project Stone 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 Project Stone to provide Goods to the Customer.

25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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

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