

TERMS AND CONDITIONS OF TRADE

1. Definitions:

- 1.1 “Moorabbin Marble” means Moorabbin Marble and Granite Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Moorabbin Marble and Granite Pty Ltd;
- 1.2 “Client” means the person/s order the works as specified in any invoice, document or order and if there is more than one Client, a reference to each Client jointly and severally;
- 1.3 “Works” means all Works or Materials supplied by Moorabbin Marble to the Client at the Client’s request from time to time (where the context so permits the term “Works” or “Materials” shall be interchangeable for the other)
- 1.4 “Worksite” shall be deemed to be the new and/or existing site designed by the Client to the Seller at the time of quotation;
- 1.5 “Price” means the Price payable for the Works as agreed between Moorabbin Marble and the Client in accordance with Clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound jointly and severally these terms and conditions if the Client places an order for or accept delivery of any Works;
- 2.2 These terms and Conditions may only be amended with Moorabbin Marble’s consent in writing;
- 2.3 These terms and conditions shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Moorabbin Marble;
- 2.4 The Client accepts and acknowledges that Moorabbin Marble shall not accept any responsibility for any damage that may arise during the installation of any marble, granite, stone and/or masonry in the event that any third party contractor employed by the Client has removed any or all reference to the positioning of the marble, granite, stone and/or masonry by either plastering or altering any cabinetry in the designated area. The Client accepts that the installation of any marble, granite, stone or masonry shall be at Moorabbin Marble’s sole discretion. If the Client believes that they have any claim in relation to Works undertaken by that Third Party then the said claim must be made against that Third Party contractor in the first instance.

3. Change in Control

- 3.1 The Client shall give Moorabbin Marble not less than fourteen (14) day prior written notice of any proposed change in ownership of the Client and/or any other change in the Client’s details (including but not limited to changes in the Client’s name, address, contact phone or fax numbers or business practice). The Client shall be liable for any loss incurred by Moorabbin Marble as result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At Moorabbin Marble's sole discretion the Price shall be either:
- (a) As indicated on invoices provided by Moorabbin Marble to the Client in respect of Works performed or Materials supplied;
 - (b) Moorabbin Marble's quoted Price (subject to clause 4.2) which shall be binding upon Moorabbin Marble provided that the Client shall accept Moorabbin Marble's quotation in writing within thirty (30) days of the Quote.
- 4.2 Moorabbin Marble reserves the right to change the Price:
- (a) if a variation to the Materials which are supplied is requested;
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, alterations in joinery or hidden pipes or wiring in walls or benches) which could not reasonably be discovered prior to the commencement of the Works; or
 - (d) In the event of increases to Moorabbin Marble in the cost of labour or materials which are beyond Moorabbin Marble's control.
- 4.3 Moorabbin Marble has the absolute and sole discretion to require the Client to pay a non-refundable deposit of up to ten percent (10%) of the total price.
- 4.4 Time for payment for the Works is of the essence. The Price will be payable by the Client on the date/s determined by Moorabbin Marble, which may be:
- (a) On completion of the Works; or
 - (b) By way of progress payments in accordance with Moorabbin Marble's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) The date specified on any invoice or other form as being the date for payment; or
 - (d) Failing any notice to the contrary, the date which is seven (7) day following the date of any invoice given to the Client by Moorabbin Marble.
- 4.5 Payment may be made by cash, cheque, bank cheque, EFT transfer, Bpay, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Client and Moorabbin Marble.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay Moorabbin Marble an amount equal to any GST Moorabbin Marble must pay for any supply by Moorabbin Marble under this or any other agreement for the sale of the Materials. The client must pay GST, upon receipt of a tax invoice, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxed and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of the Works

- 5.1 Delivery (“Delivery”) of the Materials is taken to occur at the time that Moorabbin Marble (or Moorabbin Marble’s nominated carrier) delivers the Materials to the Client’s nominated address even if the Client is not present at the address.
- 5.2 Subject to clause 5.3 it is Moorabbin Marble’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.3 The Works commencement date will be put back and/or the completion date advanced by whatever time is reasonable in the event that Moorabbin Marble claim an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Moorabbin Marble’s control including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) Notify Moorabbin Marble that the site is ready.
- 5.4 Moorabbin Marble may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the due dates specified by Moorabbin Marble under clause 4 of these terms and conditions.
- 5.5 The Client must take delivery by receipt or collection of the Materials whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Materials as arranged then Moorabbin Marble shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.6 Moorabbin Marble may deliver the Works by separate instalments. Each separate instalment shall be invoice and paid in accordance with the dates specified by Moorabbin Marble in accordance with clause 4 of these terms and conditions.
- 5.7 Any time or date given by Moorabbin Marble to the Client is an estimate only. Moorabbin Marble shall not be liable for any loss or damage whatsoever due to a failure by Moorabbin Marble to deliver the Works (or any part of them) promptly or at all where due to circumstance beyond the reasonable control of Moorabbin Marble such as adverse weather conditions and/or supply of Materials by a Third Party supplier.

6. Risk

- 6.1 If Moorabbin Marble retains ownership of the Materials under clause 11 then:
- (a) Where Moorabbin Marble is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client shall insure the Materials on or before delivery. Delivery of the materials shall be deemed to have taken place immediately at the time that either:
 - (i) The Client or the Clients nominated carrier takes possession of the Materials at Moorabbin Marble’s address; or
 - (ii) The Materials are delivery by Moorabbin Marble or Moorabbin Marble’s nominated carrier to the Client’s nominated delivery address (even if the Client is not present at the address).
 - (b) Where Moorabbin Marble is required to both supply and install the Materials then Moorabbin Marble shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

- 6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests Moorabbin Marble to leave Materials outside Moorabbin Marble's premises for collection or to deliver the Materials to an unattended location then such material shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are adequately insured. In the event that such Materials are lost, damaged, or destroyed after they have been left at a location nominated by the Client, irrespective of whether it is attended to or not, then replacement of the Materials shall be at the Client's expense.
- 6.3 Where Moorabbin Marble is required to install the Materials, the Client warrants that the structure of the premises or equipment or joinery in or upon which the Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Moorabbin Marble shall not be liable for any claim, demands, losses, damage, costs and expenses however caused or arising in connection with the installation and work incidental thereto.

7. Client's Responsibilities

- 7.1 The Client acknowledges that in the event that asbestos or any other toxic substances are discovered at the Worksite that it is their responsibility to ensure the safe removal of same. The Client further agrees to indemnify Moorabbin Marble against any costs incurred by Moorabbin Marble as a consequence of such discovery. Under no circumstance will Moorabbin Marble handle removal of asbestos product.
- 7.2 The Client acknowledges that it is their responsibility to ensure that all Materials plant or equipment which Moorabbin Marble is required to install are of the correct type, size, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory authority requirements and are as specified in the specifications, drawings and plans upon which Moorabbin Marble based the quotation. The Client agrees to indemnify Moorabbin Marble against any costs incurred by Moorabbin Marble in rectifying such errors if required.
- 7.3 Moorabbin Marble is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. This is the responsibility of the Client or the Client's agent.

8. Dimensions Plans and Specifications

- 8.1 All customary building industry tolerances shall apply to the dimensions and measurements of the materials unless Moorabbin Marble and the Client agree otherwise in writing.
- 8.2 Moorabbin Marble shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 8.3 If the giving of an estimate or quotation for the supply of Materials involves Moorabbin Marble estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Moorabbin Marble's estimated measurement and quantities before the Client places an order based on such estimate or accepts such quotation.
- 8.4 Should the client require any changes to Moorabbin Marble's estimated measurements and quantities the Client shall request such changes in writing, 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.

9. Access

- 9.1 The Client shall ensure that Moorabbin Marble has clear and free access to the work site at all times to enable it to undertake the works. Moorabbin Marble and its employees, agents, contractors and other authorised representatives shall not be liable for any loss or damage to the site (including, without limitation, change to pathways, driveways, and concreted or paved or greased areas) unless due to the negligence of Moorabbin Marble, its employees, agents, contractors and other authorised representatives.

10. Underground Locations

- 10.1 Prior to Moorabbin Marble commencing any works the Client must advise Moorabbin Marble of the precise location of all underground services on the site and clearly mark the precise area in the Client's plans as well as physically identify such service on the Worksite. The underground services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telecommunication and telephone cables, fibre optic cables, oil pumping mains and any other services that may be on site.
- 10.2 Whilst Moorabbin Marble will take all care to avoid damage to any underground service, the Client agrees to indemnify Moorabbin Marble in respect of all and any liability claims, loss, damage, cost and fines as a result of damage to services not precisely located and notified as per clause 10.1.

11. Title

- 11.1 Moorabbin Marble and the Client agree that ownership of the Materials shall not pass until;
- (a) The Client has paid Moorabbin Marble all amounts owing to Moorabbin Marble; and
 - (b) The Client has met all of its other obligations to Moorabbin Marble.
- 11.2 Receipt by Moorabbin Marble 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.
- 11.3 It is further agreed that:
- (a) Until ownership of the Materials passes to the Client in accordance with clause 11.1 that the Client is only a Bailee of the Materials and unless the Materials have become fixtures must return the Materials to Moorabbin Marble on request.
 - (b) The Client holds the benefit of the Client's insurance of the Materials on trust for Moorabbin Marble and must pay to Moorabbin Marble the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) The production of these terms and conditions by Moorabbin Marble shall be sufficient evidence of Moorabbin Marble's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Moorabbin Marble to make further enquiries.
 - (d) The Client must not sell, dispose or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells,

disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Moorabbin Marble and must pay or deliver the proceeds to Moorabbin Marble on demand.

- (e) The Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Moorabbin Marble and must sell, dispose of or return the resulting product to Moorabbin Marble as it so directs.
- (f) Unless the Materials have become fixtures the Client irrevocably authorises Moorabbin Marble to enter any premises where Moorabbin Marble believes the Materials are kept and recover possession of the Materials.
- (g) Moorabbin Marble may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) The Client shall not charge or grant an encumbrance over the Material or grant nor otherwise give away any interest in the Materials while they remain the property of Moorabbin Marble.
- (i) Moorabbin Marble may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

12.1 In this clause “financing statement”, “financing charge statement”, “security agreement” and “security interest” has the meaning given to them by the PPSA.

12.2 Upon assenting to these terms and conditions in accordance with clause 2.1, the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Materials that have previously been supplied and that will be supplied in the future by Moorabbin Marble to the Client.

12.3 The Client undertakes to:

- (a) Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which Moorabbin Marble may reasonably require to:
 - (i) Register a financing statement or financing charge statement in relation to a security interest on the Personal Property Security Register (“PPSR”) established by the PPSR;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) Correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii)
- (b) Indemnify, and upon demand reimburse Moorabbin Marble for all expenses incurred in registering a financing statement or financing charge statement on the PPSR releasing any Materials charged thereby.
- (c) Not register, or permit to be registered a financing charge statement in respect of a security interest without the prior written consent of Moorabbin Marble.
- (d) Not register or permit to be registered a financing charge statement in relation the Materials in favour of a third party without the prior written consent of Moorabbin Marble; and

- (e) Immediately advise Moorabbin Marble of any material change in its business practice of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 12.4 Moorabbin Marble and the Client agree that sections 98, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client hereby waives its rights to receive notices under sections 98, 118, 121(4), 130, 132(3) and 132 (4) of the PPSA.
- 12.6 The Client waives its rights as a grantor and/or a debtor under section 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Moorabbin Marble, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client shall unconditionally ratify any actions taken by Moorabbin Marble under clause 12.3 to 12.5
- 12.9 Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of Moorabbin Marble agreeing to supply the Materials, the client charges all of its rights, title and interest (whether joint or several) in any land, real property or other assets capable of being charged, owned by the client, either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including but not limited to the payment of any money).
- 13.2 The client indemnifies Moorabbin Marble from and against all Moorabbin Marble's costs and disbursements including legal costs on a solicitor own client basis, incurred in exercising Moorabbin Marble's rights pursuant to this clause.
- 13.3 The Client irrevocably appoints Moorabbin Marble and each director of Moorabbin Marble as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including but not limited to signing any document on the Client's behalf.

14. Defects, warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 14.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Moorabbin Marble in writing of any evident defect/damage, shortage in quality, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Moorabbin Marble to inspect the Materials or review the Works provided.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA) Certain statutory implied guarantees and warranties (including without limitation the statutory guarantee under the CCA) may be implied into these terms and conditions (Non Excluded Guarantee).
- 14.3 Moorabbin Marble acknowledges that nothing in these terms and conditions purports to modify or exclude the Non Excluded Guarantee.

- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non Excluded Guarantee, Moorabbin Marble makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Moorabbin Marble's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 Except as expressly set out in these terms and conditions or in respect of the Non Excluded Guarantee, Moorabbin Marble limits any warranty for workmanship relating to joins, lamination or mitred strips to twelve months.
- 14.6 Except as expressly set out in these terms and conditions or in respect of the Non Excluded Guarantee, Moorabbin Marble limits any warranty in respect of engineered stone to that of the manufacturer.
- 14.7 Except as expressly set out in these terms and conditions or in respect of the Non Excluded Guarantee, Moorabbin Marble gives no warranty in respect of natural stone after installation has completed.
- 14.8 If the Client is a consumer within the meaning of the CCA, Moorabbin Marble's liability is limited to the extent permitted by section 84A of Schedule 2.
- 14.9 If Moorabbin Marble is required to replace any Materials under this clause or the CCA, but is unable to do so, Moorabbin Marble may refund any money the Client has paid for the Materials.
- 14.10 If Moorabbin Marble is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Moorabbin Marble may refund any month the Client has paid for the Works but only to the extent that such refund shall take into account the value of the Works and Materials which has been provided to the Client which were not defective.
- 14.11 If the Client is not a consumer within the meaning of the CCA, Moorabbin Marble's liability for any defect or damage in the Materials is:
- (a) Limited to the value of any express warranty or warrant card provided to the Client by Moorabbin Marble at Moorabbin Marble's sole discretion;
 - (b) Limited to any warranty to which Moorabbin Marble is entitled, if Moorabbin Marble did not manufacture the Materials;
 - (c) Otherwise negated absolutely.
- 14.12 Subject to this clause 14, returns will only be accepted provided that:
- (a) The Client has complied with the provisions of clause 14.1; and
 - (b) Moorabbin Marble has agreed that the Materials are defective; and
 - (c) The Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) The Materials are returned in as close a condition to that in which they were delivered as is possible.
- 14.13 Notwithstanding clauses 14.1 to 14.3 but subject to the CCA, Moorabbin Marble shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) The Client failing to properly maintain or store any Materials;
 - (b) The Client using the Materials for any purpose other than for that for which they were designed;

- (c) The Client continuing to use any Material after an defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) Interference with the Works by the Client or any third party without Moorabbin Marble's prior approval;
 - (e) The Client failing to follow any instructions or guidelines provided by Moorabbin Marble;
 - (f) Fair wear and tear, any accident or act of God.
- 14.14 In the case of second hand Materials unless the Client is a consumer under the CCA the Client acknowledge that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Moorabbin Marble as to the quality or suitability for any purposes and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Moorabbin Marble has agreed to provide the client with the second hand Materials and calculated the Price of the second hand Materials in reliance on this clause 14.11.
- 14.15 Moorabbin Marble may in its absolute discretion accept non-defective Materials for return in which case Moorabbin Marble may require the Client to pay handling fees of up to twenty per cent (20%) of the value of the returned Materials plus any freight costs.
- 14.16 Notwithstanding anything contained in this clause 14, if Moorabbin Marble is required by law to accept a return then Moorabbin Marble will only accept a return on the conditions imposed by that law.

15. Intellectual Property

- 15.1 Where Moorabbin Marble has designed, drawn, written or prepared plans or a schedule of Works, or created any products for the Client then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Moorabbin Marble and shall only be used by the Client at Moorabbin Marble's discretion.
- 15.2 The Client warrants that all designs, specifications or instructions given to Moorabbin Marble will not cause Moorabbin Marble to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Moorabbin Marble against any action taken by a third party against Moorabbin Marble in respect of any such infringement.
- 15.3 The Client agrees that Moorabbin Marble may (at no cost) use for the purposes of marketing or entry into any competition any documents, designs, drawings, plans or products which Moorabbin Marble has created for the client.

16. Default and Consequences of Default

- 16.1 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 Moorabbin Marble's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the client owes Moorabbin Marble any money the Client will indemnify Moorabbin Marble from and against all costs and disbursement incurred by Moorabbin Marble in recovering the debt (excluding but not limited to internal administration fees, legal costs

on a solicitor and own client basis, Moorabbin Marble's collection agency costs and bank dishonour fees).

- 16.3 Without prejudice to any other remedies Moorabbin Marble may have, if at any time the Client is in breach of any obligation (including those relating to payment under these terms and conditions Moorabbin Marble may suspend or terminate the supply of Works to the Client. Moorabbin Marble will not be liable to the Client for any loss or damage the Client suffers because Moorabbin Marble has exercised its rights under this clause.
- 16.4 Without prejudice to Moorabbin Marble's other remedies at law, Moorabbin Marble shall be entitled to cancel all or any part of any order of the Client which remains unfilled and all amounts owing to Moorabbin Marble shall whether or not due for payment, become immediately payable if:
- (a) Any money payable to Moorabbin Marble becomes overdue, or in Moorabbin Marble's opinion, the Client will be unable to make a payment when it falls due;
 - (b) The Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes to enter into an arrangement with creditors, or make an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Compliance with laws.

- 17.1 The Client and Moorabbin Marble shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 17.2 The Client shall obtain (at the expense of the Client) all licences and approvals that may be required for the Works.
- 17.3 The Client agrees that the Works will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Dispute Resolution

- 18.1 If a dispute arises between Moorabbin Marble and the Client in respect of these terms and conditions 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.

19. Cancellation

- 19.1 Moorabbin Marble may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice of up to five (5) business days to the Client. On giving such notice Moorabbin Marble shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Moorabbin Marble for Works already performed. Moorabbin Marble shall not be liable for any loss of damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels the delivery or Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Moorabbin Marble as a direct result of the cancellation (including but not limited to any loss of profits).
- 19.3 Cancellation of orders for products made to the Client's specifications or for non stocklist items will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Act 1988

- 20.1 The Client agrees for Moorabbin Marble to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Moorabbin Marble.
- 20.2 The Client agrees that Moorabbin Marble may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) To assess an application by the Client; and/or
 - (b) To notify other credit providers of a default by the Client; and/or
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) To assess the creditworthiness of the Client.The client understands that the information exchanged can include anything about the client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 20.3 The client consents to Moorabbin Marble being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1) (h) Privacy Act 1988)
- 20.4 The client agrees that the personal credit information provided may be used and retained by Moorabbin Marble for the following purposes (and for other purposes as shall be agreed between the client and Moorabbin Marble or required by law from time to time) :
 - (a) The provision of works; and/or
 - (b) The marketing of works by Moorabbin Marble, its agents, or distributors; and/or
 - (c) Analysing, verifying and/or checking the client's credit, payment and/or status in relation to the provision of works; and/or
 - (d) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the client ; and/or
 - (e) Enabling the daily operation of client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 20.5 Moorabbin Marble may give information about the Client to a credit reporting agency for the following purposes:

- (a) To obtain a consumer credit report about the client;
 - (b) Allow the credit reporting agency to create or maintain a credit information file containing information about the client;
- 20.6 The information given to the credit reporting agency may include:
- (a) Personal particulars (the clients name, sex, address, previous addresses, date of birth, name of employer and drivers licence number);
 - (b) Details concerning the client's application for credit or commercial credit and the amount requested;
 - (c) Advice that Moorabbin Marble is a current credit provider to the Client;
 - (d) Advice of any overdue amounts loan repayments and/or any outstanding moneys owing which are overdue by more than sixty (60) days, and for which debt collection action has commenced;
 - (e) That the client's overdue accounts, loan repayments and/or any outstanding moneys are no longer overdue in respect of any default that has been listed;
 - (f) Information that, in the opinion of Moorabbin Marble the client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the clients credit obligations);
 - (g) Advice that cheques drawn by the client for one hundred dollars (\$100.00) or more, have been dishonoured more than once;
 - (h) That credit provider to the client by Moorabbin Marble has been paid or otherwise discharged.

21. Unpaid Moorabbin Marble's rights

- 21.1 Where the client has left any item with Moorabbin Marble for repair, modification, exchange or for Moorabbin Marble to perform any other services in relation to the item and Moorabbin Marble has not received or been tendered the whole of any moneys owing to it by the client, Moorabbin Marble shall have, until all moneys owing to Moorabbin Marble are paid:
- (a) A lien on the item; and
 - (b) The right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Materials.
- 21.2 The lien of Moorabbin Marble shall continue despite the commencement of proceedings, or judgment for any moneys owing to Moorabbin Marble having been obtained against the client.

22. Building and Construction Industry Security of Payment Act 2002

- 22.1 At Moorabbin Marble's sole discretion, if there are any disputes or claims for unpaid Materials and/or works, then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria except to the extent permitted by the Act where applicable.

23. General

- 23.1 The failure of Moorabbin Marble to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Moorabbin Marble'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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which Moorabbin Marble has its principal place of business, and are subject to the jurisdiction of the Courts of that State.
- 23.3 Subject to clause 14, Moorabbin Marble shall be under no liability whatsoever to the client for any indirect and/or consequential loss and/or expense including (loss of profit) suffered by the client arising out of breach by Moorabbin Marble of these terms and conditions, (alternatively Moorabbin Marble's liability shall be limited to damages which under no circumstances shall exceed the price of the works);
- 23.4 The client shall not be entitled to set off against, or deduct from the Price, any sums owed, or claimed to be owed to the Client by Moorabbin Marble nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 Moorabbin Marble may licence or sub contract all or any part of its rights or obligations without the client's consent;
- 23.6 The Client agrees that Moorabbin Marble may amend these terms and conditions at any time. If Moorabbin Marble makes a change to these terms and conditions then that change will take effect from the date on which Moorabbin Marble notifies the client of such change. The client will be taken to have accepted such changes if the client makes a further request for Moorabbin Marble to provide any works to the client;
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or any event beyond the reasonable control of either party.
- 23.8 The client warrants that it has the power to enter into this agreement and has obtained all the necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.