ART STONE

ART STONE TEAM LIMITED · AUCKLAND, NEW ZEALAND

Standard Terms and Conditions of Supply, Fabrication and Installation

CONCISE EDITION

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NZBN 9429047430945 · Registered office 92-96 Hillside Road, Wairau Valley, Auckland 0627

Applies to all Quotations issued, and Contracts formed, on or after the Effective date.

IMPORTANT NOTICE

Read clauses 17–20 (security interests, charge over land, personal guarantee), 51–59 (material characteristics), 61–62 (statutory rights) and 65–67 (liability and indemnity) with particular care. They create security over goods and land, allocate risk, and limit rights you would otherwise have.

Natural stone is a product of geology, not manufacturing. Variation in colour, veining, pattern, texture, porosity, fissuring, pitting and resin content is inherent and is not a defect. Engineered, sintered and porcelain surfaces vary between batches.

If you acquire Stone Products for personal, domestic or household use, you have rights under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 that cannot be excluded, and nothing in these Terms limits them (clauses 61–62).

If you do not understand any part of these Terms, obtain independent legal advice before accepting a Quotation.

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PART A — INTERPRETATION AND APPLICATION

1. DEFINITIONS

1.1 In these Terms, unless the context otherwise requires:

Acceptance means acceptance of a Quotation under clause 5.

Access Route means the whole path by which Stone Products must travel from the point at which the Company's vehicle can lawfully and safely stand to the point of installation, including driveways, paths, steps, corridors, doorways, lifts, stairwells and scaffolding.

Approval means written or electronic confirmation by or for the Customer approving a Digital Slab Layout, Slab, template, drawing or Variation; **Approve** and **Approved** have corresponding meanings.

Business Day means a day other than a Saturday, Sunday, Auckland public holiday, or any day from 20 December to 10 January inclusive.

CCA means the Construction Contracts Act 2002; **CCLA** the Contract and Commercial Law Act 2017; **CGA** the Consumer Guarantees Act 1993; **FTA** the Fair Trading Act 1986; **HSWA** the Health and Safety at Work Act 2015; **PPSA** the Personal Property Securities Act 1999; **Privacy Act** the Privacy Act 2020.

Company means Art Stone Team Limited, its successors and permitted assigns.

Consumer has the meaning given in section 2 of the CGA.

Contract means a contract formed under clause 5, comprising the documents in clause 3.3.

Credit Limit means the maximum credit the Company has agreed in writing to extend to a Trade Account Customer, as varied under clause 16.

Customer means the person who accepts a Quotation, places an order, or for whom the Company agrees to supply, and its successors and permitted assigns; where two or more persons comprise the Customer, each is bound jointly and severally.

Defect means a failure of the Stone Products or Installation Works to comply with the warranty in clause 49, but excludes any matter described in clauses 51 to 59 or clause 60.

Defects Liability Period means the period in clause 48.1.

Digital Slab Layout means a computer-generated representation of the proposed positioning of cuts, joins, seams, cut-outs and edges on identified Slabs, produced using SlabKast or comparable software.

Force Majeure Event has the meaning in clause 69.1.

Insolvency Event means, in relation to a person: insolvency or inability to pay debts as they fall due; appointment of a liquidator, receiver, administrator or statutory manager; any compromise or arrangement with creditors; bankruptcy, no asset procedure or summary instalment order; cessation of business; or any analogous event in any jurisdiction.

Installation Works means delivery to Site, positioning, levelling, jointing, adhesion, sealing of joins and fixing of Stone Products, and associated cut-outs, drilling, mitring and on-Site trimming performed by the Company.

Intellectual Property Rights means all present and future intellectual and industrial property rights, registered or unregistered, and applications for them.

Material means the slab material fabricated by the Company, including natural stone (granite, marble, quartzite, travertine, limestone, onyx and comparable stones), porcelain, engineered stone (quartz composite) and sintered stone.

Offcut has the meaning in clause 46.1. **Practical Completion** has the meaning in clause 47.1.

Price means the price in the Quotation, as adjusted under these Terms.

Quotation means a written or electronic quotation, estimate or proposal issued by the Company.

Site means the premises at which the Installation Works are to be performed. **Site Readiness Requirements** means the requirements in clause 34.1.

Slab means an individual slab of Material identified by supplier, bundle and slab number.

SlabKast means the digital slab-layout software used by the Company, and any successor or comparable software.

Special Conditions means conditions agreed in writing and signed by an authorised representative of the Company which are expressed to vary these Terms.

Standing Time means time during which the Company's personnel, plant or subcontractors are present at or committed to attend the Site but cannot progress the Installation Works for reasons not attributable to the Company.

Stone Products means the benchtops, splashbacks, vanities, fireplace surrounds and hearths, cladding, panels, table tops and other fabricated stone elements supplied under a Contract.

Templating means the process in clause 24.1. **Terms** means these terms, as amended under clause 6.

Trade Account Customer means a Customer granted a trade credit account under clause 15.

Variation means any addition to, omission from or change in the Stone Products, Materials, Installation Works, sequence, timing, or conditions under which work is performed.

Working Drawings means CAD drawings, shop drawings, templates, setout drawings, cut-lists and Digital Slab Layouts prepared by or for the Company.

1.2 Terms defined in the PPSA (including *collateral*, *financing statement*, *proceeds*, *purchase money security interest*, *security interest* and *verification statement*) have the same meaning in these Terms.

2. INTERPRETATION

2.1 The singular includes the plural; a reference to a person includes any entity; a reference to a statute includes amendments, replacements and instruments made under it; headings do not affect interpretation; "includes" is not a word of limitation; "written" and "in writing" include any communication accessible for subsequent reference within the meaning of section 209 of the CCLA, including email; "$" means New Zealand dollars; "day" means calendar day; anything required to be done on a day that is not a Business Day must be done on the next Business Day; and a reference to a party doing an act includes that act being done by its employees, agents and subcontractors.

2.2 **No contra proferentem.** These Terms are not to be construed adversely to the Company merely because it prepared them. Each party has had the opportunity to take independent legal advice.

2.3 Where the Customer comprises two or more persons, each is bound jointly and severally.

2.4 A Customer contracting as trustee contracts both personally and as trustee, warrants that it has full power to enter into and perform the Contract and that its right of indemnity from trust assets has not been limited, released or subordinated, and is liable in its personal capacity.

3. APPLICATION

3.1 These Terms apply to every Quotation and Contract, to the exclusion of any terms the Customer purports to impose (whether in a purchase order, head contract, subcontract or website terms), notwithstanding that the Company may have signed, initialled or receipted any such document. Commencement of work, delivery, or acceptance of payment by the Company does not constitute acceptance of the Customer's terms.

3.2 If the Contract documents are inconsistent, the following order of precedence applies: (a) Special Conditions; (b) any Variation Form executed under clause 32, as to the matters it addresses; (c) the Quotation; (d) these Terms; (e) Approved Working Drawings and Digital Slab Layouts; (f) any other document expressly incorporated by the Quotation.

3.3 **Subcontract engagements.** Where the Company is engaged as a subcontractor, these Terms govern its engagement notwithstanding any head contract, and the Company is not bound by any head contract unless it expressly agrees in writing to identified provisions of it. The Company does not accept any "pay when paid" arrangement, and the Customer acknowledges that any such provision is void under section 13 of the CCA.

3.4 To the extent these Terms relate to construction work they are a construction contract under the CCA. Nothing in them limits, and they are read subject to, the mandatory provisions of the CCA, including the right to refer a dispute to adjudication at any time under section 25 and the retention money regime in subpart 2A of Part 2.

PART B — FORMATION

4. QUOTATIONS

4.1 A Quotation is an invitation to treat and is not an offer capable of acceptance unless expressly stated to be a firm offer.

4.2 Unless the Quotation states otherwise, it: (a) is valid for 30 days and then lapses automatically; (b) is based on the Materials, quantities, dimensions, profiles, finishes and Site conditions described in it and on information supplied by or for the Customer; (c) is based on preliminary dimensions and is subject to remeasurement after Templating (clause 25.2); (d) excludes GST; (e) assumes one mobilisation for Templating and one for installation; (f) assumes standard access (clause 42.2) and excludes craneage, hoisting, scaffolding, traffic management and out-of-hours work; (g) excludes plumbing, electrical, cabinetry, tiling, painting, waterproofing, splashback glass, demolition, removal of existing benchtops (unless itemised) and making good; and (h) assumes the continued availability of any identified Slabs.

4.3 **Material price movements.** If, before the Company orders the Material, its landed cost increases by more than 5% by reason of supplier price increases, exchange rate movements, freight, duties, levies or any tariff, tax or regulatory charge, the Company may increase the Price by that amount on giving the Customer reasonable evidence of it. If the resulting increase exceeds 10% of the Price, the Customer may cancel by written notice within five Business Days, and the Company will refund the Deposit less costs properly incurred.

4.4 The Company may correct any clerical, computational or typographical error before the relevant Stone Products are cut; where correction increases the Price by more than 5%, clause 4.3 applies.

4.5 Any provisional sum, allowance or estimate is indicative only. The Customer is liable for the actual cost plus the Company's margin as stated in the Quotation or, if not stated, 15%.

4.6 A Quotation is personal to the Customer, relates only to the Site identified, and may not be relied on by any other person.

5. ACCEPTANCE

5.1 A Contract is formed on the earliest of: (a) the Customer signing and returning the Quotation or the Company's acceptance form; (b) the Customer confirming acceptance in writing, including by email or through the Company's portal; (c) the Company receiving the Deposit or any part of it; or (d) the Company commencing Templating, fabrication or supply at the Customer's request.

5.2 Acceptance is irrevocable except under clauses 4.3, 4.4, 7 or 69.4, or as required by law.

5.3 The Customer warrants that: each person who accepts a Quotation, places an order or gives an Approval on its behalf has authority to bind it, and the Company may rely on apparent authority without enquiry; all information supplied by or for the Customer is complete and accurate; and the Customer has satisfied itself as to the suitability of the selected Material, having regard to clauses 51 to 59.

5.4 Where a Contract is formed under clause 5.1(d), the Customer is bound by these Terms notwithstanding that no Quotation has been signed.

6. AMENDMENT

6.1 The Company may amend these Terms by written notice or by publication on its website; amended Terms apply to Quotations issued and Contracts formed after that date.

6.2 No amendment to an existing Contract is effective unless in writing and signed by an authorised representative of the Company. No employee, agent, subcontractor or salesperson has authority to vary these Terms orally or by conduct, except a director or a person authorised in writing by a director.

6.3 The Customer must not rely on any statement, representation, promise or undertaking not expressly recorded in the Contract, except where it is fraudulent, or to the extent the Customer's rights arise under the CGA or FTA and are not lawfully excluded under clauses 61 or 62.

7. CANCELLATION BY THE CUSTOMER

7.1 The Customer may not cancel a Contract, in whole or in part, without the Company's prior written consent.

7.2 Where the Company consents to cancellation, or accepts the Customer's repudiation, the Customer must pay on demand, as a debt: (a) the cost of all Materials ordered, allocated or purchased, whether or not fabrication has begun; (b) the cost of all labour, plant, Templating, drafting and fabrication performed; (c) any cancellation, restocking or freight charge levied on the Company by its suppliers; (d) all committed third-party costs the Company cannot reasonably avoid; and (e) 15% of the balance of the Price not otherwise recovered, as a contribution to overheads and lost margin.

7.3 The parties acknowledge that clause 7.2 is a genuine estimate of the Company's loss, that the Company has a legitimate interest in performance beyond mere compensation, and that the amounts are not out of all proportion to that interest.

7.4 The Company may retain and apply the Deposit against amounts payable under clause 7.2 and must refund any excess. Cancellation does not affect accrued rights.

PART C — PRICE, PAYMENT AND CREDIT

8. DEPOSITS

8.1 Unless the Quotation states otherwise, the Customer must pay a deposit of 50% of the Price (plus GST) on Acceptance (the **Deposit**). The Company need not order Materials, schedule Templating, reserve Slabs or commence fabrication until the Deposit is received in cleared funds.

8.2 The Deposit is not a penalty. It is applied towards the Price and is refundable only under clauses 4.3, 4.4 or 69.4, or where the Company is in material breach and the Customer lawfully cancels. The Company may waive the Deposit for a Trade Account Customer with a sufficient Credit Limit.

9. PRICE

9.1 The Price excludes GST, which is payable in addition and at the same time.

9.2 The Price is subject to adjustment for: remeasurement following Templating (clause 25.2); Variations (clause 32); Standing Time and abortive visits (clause 44); storage (clause 45); craneage, hoisting, access works and traffic management (clause 42); material price movements (clause 4.3); and provisional sums (clause 4.5).

9.3 **Whole slab charge.** The Customer is charged for the whole of each Slab consumed in fabrication, and not merely for the finished square metres installed, unless the Quotation expressly states that it is priced on a fabricated-square-metre basis. Where the Customer is charged for whole Slabs, clause 46 applies to the resulting Offcuts.

10. PAYMENT TERMS

10.1 Unless the Company has granted a trade credit account under clause 15, the Customer must pay: (a) the Deposit on Acceptance; (b) any Variation amount as required by clause 32.5; (c) the balance of the Price, including all adjustments, in cleared funds **not less than two Business Days before the scheduled date of delivery or installation**; and (d) any amount subsequently invoiced under clause 9.2, within 7 days of invoice date.

10.2 The Company need not deliver Stone Products to Site or commence the Installation Works until the amount under clause 10.1(c) is received in cleared funds. The Company may invoice by stage or by Site, and each invoice is a separate payment obligation.

10.3 **Time is of the essence** in respect of every payment obligation.

10.4 **No set-off.** The Customer must pay in full without deduction, withholding, set-off, counterclaim or retention, except any deduction required by law, any amount properly withheld under a payment schedule validly issued under the CCA, and any amount the parties have agreed in writing may be withheld.

10.5 The Company may apply any payment against such of the Customer's obligations as it determines, irrespective of any appropriation by the Customer, and may apply payments to interest, recovery costs and charges before principal.

10.6 **Payment method.** Payment must be made by direct credit to the account nominated on the Company's invoice. The Customer must verify the Company's bank account details by telephoning the number published on the Company's website before making any payment or any change to previously used details. The Company is not liable for loss suffered by the Customer in paying funds to an account other than the Company's, including where the Customer acted on fraudulently altered invoice or email details, unless that alteration resulted from the Company's own negligence.

10.7 The Company may pass on any merchant service fee or transaction cost of accepting a payment method other than direct credit, provided it discloses the surcharge before payment and the surcharge does not exceed its actual cost.

11. CONSTRUCTION CONTRACTS ACT 2002

11.1 Where and to the extent the Contract is a construction contract: (a) each invoice stated to be made under the CCA is a **payment claim** under section 20; (b) if the Customer disputes any part of a payment claim it must issue a **payment schedule** complying with section 21 within 20 Business Days of service, failing which it becomes liable for the claimed amount on the due date and the Company may exercise its rights under sections 23 and 24; (c) the due date is the date in clause 10.1 or, for a Trade Account Customer, clause 15.3; (d) the Company may suspend construction work under section 24A where an amount is unpaid, and the Customer indemnifies it for the reasonable costs of suspension and remobilisation; and (e) nothing in the Contract contracts out of the CCA, and any inconsistent provision is to that extent of no effect.

11.2 Where retention money is withheld from the Company, the Customer must comply with subpart 2A of Part 2 of the CCA, including the obligations to hold retention money on trust, to keep it in a separate trust account or provide a complying financial instrument, and to keep and provide the prescribed records and reporting.

12. DEFAULT INTEREST

12.1 The Customer must pay interest on any amount unpaid after its due date, from the due date until payment in full (before and after judgment), calculated daily and compounding monthly, at **1.5% per calendar month (18% per annum)**.

12.2 The parties acknowledge that: the Company's cost of capital, the administrative cost of managing overdue accounts and the disruption to cash flow are difficult to quantify precisely; the rate in clause 12.1 is a genuine and reasonable pre-estimate of the Company's loss having regard to its own borrowing costs and the credit risk assumed; the Company has a legitimate interest in securing timely payment; and the rate is not out of all proportion to that interest and is not a penalty.

12.3 Interest accrues without demand. The Company may waive interest in any case without affecting its right to charge it on any other occasion.

13. RECOVERY COSTS

13.1 The Customer must pay on demand, as a debt, all costs the Company incurs in: recovering any overdue amount; enforcing any right under the Contract, including its security interests under clauses 17 to 19; any Insolvency Event affecting the Customer or a guarantor; any dishonoured payment; and obtaining or maintaining any credit report or default listing.

13.2 Those costs include: (a) the Company's solicitors' fees and disbursements on a **solicitor and own client** basis; (b) debt collection agency commission and field call fees; (c) mercantile agent, process server, repossession and storage costs; (d) Court, tribunal, adjudication and mediation fees; and (e) the Company's internal administration costs at $75 per hour (plus GST), capped at $1,500 per matter.

13.3 The Customer acknowledges that clause 13.2(a) reflects the Company's actual liability to its solicitors and is a term agreed as part of the credit extended. The Company's entitlement is in addition to, and not limited by, any Court costs order, but it may not recover the same cost twice.

14. SUSPENSION AND TERMINATION BY THE COMPANY

14.1 The Company may, without liability, immediately suspend performance of any or all Contracts, withhold delivery, cease the Installation Works, and withhold Working Drawings and Digital Slab Layouts, if: (a) any amount is unpaid after its due date; (b) the Customer exceeds its Credit Limit; (c) an Insolvency Event occurs in relation to the Customer or a guarantor; (d) the Customer breaches a material term and, if capable of remedy, fails to remedy it within five Business Days of written notice; (e) the Company reasonably believes the Customer will be unable to pay amounts as they fall due;

(f) the Site is unsafe or does not meet the Site Readiness Requirements; or (g) the Customer fails to give an Approval required under Part E within 10 Business Days of request.

14.2 The Company may terminate any or all Contracts by written notice on the occurrence of any event in clause 14.1(a), (c), (d) or (e).

14.3 On termination: (a) all amounts owing become immediately due and payable notwithstanding any credit terms; (b) the Company may enter any premises where Stone Products in which it retains title are located and repossess them, and the Customer irrevocably grants the Company, its employees and agents a licence for that purpose; (c) the Company may retain and set off the Deposit and any progress payments; and (d) the Customer must pay the amounts specified in clause 7.2.

14.4 Suspension or termination does not prejudice any other right or remedy.

15. TRADE ACCOUNTS

15.1 The Company may, in its absolute discretion, grant a trade credit account following receipt of a completed Trade Credit Application (Schedule 2) and such supporting information as it requires. It need not give reasons for declining an application, reducing a Credit Limit, or suspending or closing an account.

15.2 The Customer warrants that all information in the Trade Credit Application is true, complete and not misleading, and acknowledges that the Company relies on it. The Customer must notify the Company in writing within five Business Days of: any change in its directors, trustees, partners, registered office, or in more than 25% of its shareholding; any change in its legal name, structure or NZBN; any sale of a material part of its business or assets; any Insolvency Event or event likely to lead to one; and any material adverse change in its financial position.

15.3 Unless otherwise agreed in writing, a Trade Account Customer must pay each invoice **by the 20th day of the month following the month of the invoice**.

15.4 The Company may at any time and without notice suspend or close a trade account, whereupon all amounts owing become immediately due and payable. A trade account granted to a Customer does not entitle any related company, associated entity or franchisee to credit; each must apply separately.

16. CREDIT LIMITS

16.1 The Company will notify each Trade Account Customer of its Credit Limit and may increase, reduce, suspend or cancel it at any time by written notice with immediate effect. The Customer must not permit the aggregate of amounts invoiced and unpaid, plus the value of work performed but not invoiced, to exceed the Credit Limit.

16.2 If the Credit Limit is or would be exceeded, the Company may decline the order, suspend supply, or require payment in advance or additional security, and all amounts owing become immediately due and payable at the Company's election.

16.3 The Company may at any time require additional security, including a personal guarantee in the form of Schedule 3, a bank guarantee, a bond, or a registered security interest. Failure to provide it within 10 Business Days entitles the Company to exercise its rights under clause 14.

16.4 THE COMPANY MAY MAKE SUCH CREDIT ENQUIRIES AS IT THINKS FIT, INCLUDING OBTAINING CREDIT REPORTS, AND MAY REPORT PAYMENT DEFAULT INFORMATION TO CREDIT REPORTING AGENCIES IN ACCORDANCE WITH THE PRIVACY ACT AND THE CREDIT REPORTING PRIVACY CODE 2020. THE CUSTOMER CONSENTS TO THOSE ENQUIRIES AND THAT REPORTING, AND AUTHORISES ANY PERSON TO DISCLOSE TO THE COMPANY INFORMATION RELEVANT TO ITS CREDITWORTHINESS.

PART D — SECURITY, RISK AND INSURANCE

17. PERSONAL PROPERTY SECURITIES ACT 1999

17.1 These Terms constitute a security agreement. The Customer grants the Company a security interest in all Stone Products and Materials supplied or to be supplied (present and after-acquired), in all Stone Products and Materials previously supplied, and in all proceeds of that collateral (including insurance proceeds, accounts receivable from any on-sale, and anything into which the collateral is converted or commingled), to secure the Price and all other amounts owing on any account. The security interest in Stone Products supplied under a Contract is a purchase money security interest to the extent permitted by the PPSA.

17.2 The Customer consents to registration of a financing statement; must promptly provide all information and do all things reasonably required to register, perfect, maintain and enforce a perfected first-ranking security interest, including its full legal name, date of birth (if an individual), NZBN and trust details; must not permit registration of a competing financing statement over the collateral without the Company's written consent; and must give 10 Business Days' prior written notice of any change to its name, address, structure or registered details.

17.3 The Customer waives its right under section 148 of the PPSA to receive a verification statement or financing change statement, and any other PPSA notice or statement that may lawfully be waived.

17.4 To the maximum extent permitted by section 107(2) of the PPSA, sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 do not apply. Nothing in this clause contracts out of any provision where contracting out is not permitted.

17.5 The Company may exercise all rights of a secured party under the PPSA, at law and in equity, including seizing, retaining, selling or disposing of collateral and appointing a receiver. Those rights are additional to its rights under clauses 14, 18 and 19. The Customer must pay all registration, maintenance and enforcement costs on the basis in clause 13. Nothing in this clause creates a security interest over land.

18. RETENTION OF TITLE

18.1 Notwithstanding delivery, installation or passing of risk, legal and equitable title in the Stone Products and Materials does not pass until the Company receives, in cleared funds, payment in full of the Price and all other amounts owing under the relevant Contract, **and** all other amounts owing by the Customer to the Company on any other account, whether or not then due.

18.2 Until title passes the Customer holds the Stone Products as bailee for the Company, and must store them separately and identifiably; not deface or remove any identifying mark, label or slab number; keep them insured for full replacement value with the Company's interest noted; keep them free of any charge, lien or encumbrance; and not represent that it has title to them.

18.3 Until title passes the Customer may sell or use the Stone Products only in the ordinary course of business, and if it does so it acts as the Company's fiduciary agent (but may not incur liability on the Company's behalf), must hold the proceeds on trust for the Company in a separate account, unmingled with other money, and must account to the Company for them up to the amount owing. The Company's security interest attaches to those proceeds and to any resulting account receivable.

18.4 If any amount is unpaid after its due date, or an Insolvency Event occurs, the Company may without notice enter any premises where Stone Products in which it retains title are, or are reasonably believed to be, located, and take possession of and remove them. The Customer irrevocably grants a licence to enter for that purpose, must procure a corresponding right of entry from any occupier or owner, and indemnifies the Company against any claim arising from that entry other than one arising from the Company's negligence or wilful misconduct.

18.5 If the Stone Products are attached to, incorporated in or commingled with other goods so that they cease to be identifiable, the Company's title continues in the resulting product to the extent of the value of the Stone Products, and its security interest attaches as an accession or to the commingled goods under Parts 8 and 9 of the PPSA.

18.6 **Fixtures.** Where Stone Products become fixtures, retention of title ceases to be effective against the owner of the land at the point of affixation, but the Customer remains liable for the Price in full, the Company's security interest attaches to the proceeds and to any resulting accounts receivable, and the Company's rights under clause 19 apply.

19. CHARGE AND CAVEAT

19.1 To secure all amounts owing, the Customer charges in favour of the Company all of its present and after-acquired legal and equitable estate and interest in any land in which it has or later acquires a registrable interest, and irrevocably appoints the Company and each of its directors severally as its attorney to execute in its name all documents necessary to give effect to this clause, including a mortgage, caveat or notice of claim of interest in land.

19.2 The Customer acknowledges that this clause creates an equitable interest in its land and that the Company may lodge a caveat. The Customer must not lodge, and must withdraw, any caveat lodged in respect of the Company's interest without consent, and indemnifies the Company for all costs (including solicitor and own client costs) of lodging, maintaining, defending or removing a caveat.

19.3 The Company must not lodge a caveat unless an amount is overdue or an Insolvency Event has occurred, must act reasonably in exercising its rights under this clause, and must withdraw any caveat within 10 Business Days of payment in full. The power of attorney is granted for valuable consideration, is coupled with an interest, is irrevocable while any amount remains owing, and may be exercised only for the purposes of this clause.

20. GUARANTEES

20.1 The Company may require, as a condition of granting or continuing credit, that each director, shareholder, trustee or principal of the Customer execute a personal guarantee and indemnity in the form of Schedule 3.

20.2 Each guarantor unconditionally and irrevocably guarantees the due performance of the Customer's obligations and the payment of all amounts owing, and indemnifies the Company against all loss arising from the Customer's failure to perform, including where any obligation of the Customer is or becomes void, voidable or unenforceable. The guarantee is continuing, is a principal obligation and not merely one of surety, is not discharged by any variation of the Contract, grant of time or indulgence, release of any other guarantor, or any other act or omission that would otherwise discharge a surety, and may be enforced without the Company first proceeding against the Customer or realising any security.

20.3 A guarantee must be in writing and signed by the guarantor in accordance with section 27 of the Property Law Act 2007. **The Company recommends, and each guarantor acknowledges being advised, that the guarantor obtain independent legal advice before signing.**

21. RISK

21.1 Risk passes to the Customer on the earlier of delivery of the Stone Products to the Site, to a place nominated by the Customer, or to a carrier engaged by or for the Customer; and the Company notifying the Customer that the Stone Products are fabricated and available for delivery or collection. Risk passes notwithstanding that title has not passed, and Stone Products stored under clause 45 are stored at the Customer's risk.

21.2 The Customer bears the risk of loss or damage after installation, including damage caused by other trades on Site. The Company bears the risk of loss or damage to Materials while in its custody at its facility and in transit in its own vehicles, but not once unloaded at the Site.

22. INSURANCE

22.1 The Company maintains, with a reputable insurer, public liability insurance of not less than $2,000,000 per occurrence, motor vehicle insurance, plant and equipment insurance, and any insurance required by law. It will on written request provide a certificate of currency for its public liability cover.

22.2 From the time risk passes, the Customer must at its own cost effect and maintain insurance over the Stone Products for full replacement value against loss, theft and damage; and, where the Customer is a builder, developer or head contractor, contract works insurance covering the Site and the Stone Products for full reinstatement value with the Company noted as an interested party, and public liability insurance appropriate to the Site. Evidence must be provided on request.

22.3 To the extent the Company suffers loss for which the Customer was required to be insured, the Customer must pay the Company an amount equal to the insurance proceeds that would have been payable had it complied. The Customer must not prejudice any policy of insurance in respect of the Stone Products or the Site. The existence of insurance does not limit the Customer's obligations, and the Company's liability is not increased by any insurance it holds.

PART E — DESIGN, SELECTION AND MANUFACTURE

23. SITE INSPECTIONS

23.1 The Company may, but need not, inspect the Site before Templating. Any inspection is for the Company's own purposes of assessing Site readiness, access and safety. It is not an inspection of the structural adequacy of cabinetry, substrates, walls, floors or any part of the building, is not advice as to suitability, and does not relieve the Customer of any obligation under clauses 34 to 38.

23.2 The Company does not verify, and assumes no responsibility for, the accuracy of dimensions, levels or setout supplied by the Customer, builder, designer or cabinetmaker, except to the extent it records those dimensions itself during Templating. The Customer must ensure the Company has safe and unobstructed access to the Site at all reasonable times.

24. TEMPLATING

24.1 **Templating** is the process by which the Company records, by digital measurement, laser template, physical template or a combination, the actual as-built dimensions, levels, angles and features of the Site relevant to the Stone Products. Templating cannot occur until the Site meets the Site Readiness Requirements; if it does not, clause 44 applies.

24.2 The Customer must ensure that, at Templating, all cabinetry is fully installed, permanently fixed, level, plumb and square and will not afterwards be moved, adjusted or replaced; all appliances to be integrated are on Site and available for inspection, or full manufacturer's cut-out specifications have been provided; all abutting walls are in their final state; any splashback, window, sill or return affecting the Stone Products is set out and dimensioned; the Site is clean, dry, lit and safe; and a person authorised to make decisions attends or is contactable throughout.

24.3 The Company will confirm at Templating overhangs, edge profiles, seam positions, cut-out positions and sizes, splashback heights, and any other matter requiring the Customer's decision. Those decisions, once recorded, are binding, and any subsequent change is a Variation.

24.4 **Wall irregularity.** Walls are rarely straight, plumb or square. The Company scribes the Stone Products to the walls as templated. A gap of up to 3mm to an adjoining wall is within tolerance and is concealed by silicone, splashback or scribe. Any movement, re-lining, re-tiling, re-plastering or repositioning of walls after Templating may cause the Stone Products not to fit, and any consequent re-fabrication is a Variation chargeable to the Customer.

24.5 If cabinetry, appliances, walls or Site conditions change after Templating, the Customer must notify the Company immediately. If it fails to do so and the Stone Products do not fit, the Customer is liable for the full cost of remaking and reinstalling them.

25. FINAL MEASUREMENTS

25.1 The dimensions recorded at Templating are the final measurements for manufacture and supersede all preliminary dimensions.

25.2 The Price is adjusted, up or down, to reflect the actual quantities of Material required following Templating and nesting. Where the adjustment increases the Price, the Company will notify the Customer before commencing fabrication, and the Customer must confirm acceptance in writing within three Business Days, failing which the Company may treat the Contract as suspended under clause 14.1(g).

25.3 The Company is not liable for any error in the Stone Products attributable to inaccurate, incomplete or superseded information supplied by or for the Customer.

26. SLAB SELECTION AND APPROVAL

26.1 Where the Customer selects a Material by reference to a sample, offcut, showroom display, photograph, website image, rendering or catalogue, that sample or image is **indicative only**. It illustrates the general character of the Material and is not a representation that the Material supplied will match it.

26.2 The Customer is entitled, and strongly encouraged, to inspect and Approve the actual Slabs allocated to the Contract before fabrication. If it does not do so within five Business Days of being invited to, the Company may fabricate using Slabs it selects acting reasonably, and the Customer is deemed to have Approved them.

26.3 Once a Slab is Approved (including by deemed Approval), the Customer accepts its colour, tone, veining, pattern, markings, fissures, pitting, resin fill, backing mesh and all other visible characteristics, and may not reject the Stone Products fabricated from it on the basis of those characteristics. The Company may reject any Slab it considers unsuitable for fabrication and require the Customer to select an alternative.

26.4 **Availability.** Slabs are supplied by third parties in finite quantities and specific bundles. The Company does not warrant the ongoing availability of any Material, colour, batch or finish. If a selected Slab becomes unavailable, the Company will notify the Customer and offer a substitute of comparable character and price. If the Customer does not accept a substitute, it may cancel the affected part of the Contract, the Company will refund the corresponding Deposit, and neither party has further liability in respect of that part.

27. VEIN MATCHING

27.1 Vein matching (including book-matching, end-matching and continuous-vein layout) is an aesthetic objective, not a technical specification, and is achievable only within the limits of the veining present in the Slabs supplied. It is not included in the Price unless expressly itemised, in which case the Company will use reasonable endeavours to achieve the Approved layout.

27.2 The Customer acknowledges that veins do not run through a Slab at a constant angle or depth, so the pattern on the finished face may differ from that on the Slab face as viewed before cutting; that mitred edges, waterfall ends and drop-down aprons produce a change in vein direction at the join which cannot be wholly eliminated; that a matched layout consumes substantially more Material, for which the Customer is charged under clause 9.3; and that **the Company does not warrant that vein matching will be exact, continuous or free of visible offset at joins.**

27.3 The Approved Digital Slab Layout is the definitive record of the vein match agreed. The Company's obligation is to fabricate in accordance with it, within the tolerances in clause 31.

28. DIGITAL SLAB LAYOUTS AND SLABKAST

28.1 The Company may prepare a Digital Slab Layout using SlabKast or comparable software showing the proposed positioning of each piece on each Slab.

28.2 A Digital Slab Layout is a two-dimensional planar representation generated from photographs or scans of the Slab face. The Customer acknowledges that colour, tone, contrast and brightness on any screen or print differ from the actual Slab; that the image shows the Slab face at the time of photographing, and material removed in edging, mitring, calibrating or polishing may reveal different veining beneath; that the layout does not show the finished, installed appearance, or the effect of edge profiles, cut-outs, returns or lighting; and that natural fissures, pitting, resin fill and mineral inclusions may not be visible in the image.

28.3 Approval of a Digital Slab Layout is Approval of the position of pieces, seams and cut-outs and of the general veining arrangement only. It is **not a warranty as to the precise appearance of the finished Stone Products**. Once Approved, any change requested by the Customer is a Variation. The Company may without Approval make minor adjustments where necessary to avoid a Slab defect, fissure, crack or area of insufficient structural integrity, provided the adjustment does not materially alter the Approved appearance.

29. CUSTOMER APPROVALS

29.1 Where an Approval is required, the Customer must give or withhold it within five Business Days of request, and any withholding must specify the grounds in writing.

29.2 If the Customer does not respond within that period, the Company may (in addition to its rights under clause 14.1(g)) treat the matter as Approved and give notice to that effect, provided its request clearly stated that failure to respond would result in deemed Approval.

29.3 Approvals may be given by email, through the Company's portal, or by signature on a printed layout or template. An Approval given by an architect, designer, project manager, cabinetmaker or builder engaged by the Customer binds the Customer. The Customer is responsible for obtaining any Approval required from its own client, principal, architect, designer or body corporate, and delay in doing so is a delay attributable to the Customer.

29.4 Once an Approval is given, the Company may rely on it absolutely and procure Materials and commence fabrication in reliance on it.

30. MANUFACTURE

30.1 The Company manufactures the Stone Products at its facility in accordance with the Approved Working Drawings and Digital Slab Layouts. It determines, in its reasonable discretion having regard to good fabrication practice, the number and position of seams, the method of edge construction, the location and extent of any reinforcement, and the sequence of fabrication, unless a specific requirement is recorded in the Quotation or an Approved Working Drawing.

30.2 **Seams are unavoidable.** Slabs are of finite size. Seams are required where the length or configuration of a benchtop exceeds the usable dimensions of a Slab, at changes of direction, and where access prevents delivery of a single piece. A seam is visible, has a nominal width, is filled with colour-matched adhesive, and **is not of itself a Defect**. The Company will use reasonable endeavours to place seams in the least conspicuous practicable position.

30.3 **Reinforcement.** Structurally vulnerable areas — narrow sections adjacent to cut-outs, cantilevers, unsupported spans — may require rodding or other reinforcement, which may be visible from beneath. Reinforcement reduces, but does not eliminate, the risk of breakage.

30.4 **Cut-outs** are made to the manufacturer's published templates or to the physical appliance supplied. The Customer is responsible for providing the correct appliance or specification. Where it supplies an incorrect specification, or substitutes an appliance after fabrication, any remake is a Variation.

30.5 **On-Site cutting restrictions.** Except for minor on-Site adjustment carried out with wet-cutting or on-tool extraction controls, the Company does not cut, grind or drill Materials on Site. In accordance with its duties under the HSWA and its obligation to minimise worker exposure to respirable crystalline silica so far as is reasonably practicable, **the Company will not dry-cut, dry-grind or dry-polish engineered stone or any other Material, on Site or at its facility.** The Customer must not request, or permit any person to carry out, such work on the Stone Products. Any modification of engineered stone after installation must be carried out by a suitably qualified person applying appropriate dust controls.

30.6 **Change in law.** The regulation of engineered stone and materials containing crystalline silica in New Zealand is under active review. If, before installation, a change in law, regulation, safe work instrument or WorkSafe requirement prohibits or materially restricts the Company's ability lawfully to fabricate, supply or install the selected Material, the Company must notify the Customer promptly, and the parties must acting reasonably agree a substitute Material and any adjustment to the Price. If no substitute is agreed within 15 Business Days, either party may cancel the affected part of the Contract, the Company will refund all amounts paid in respect of that part less the value of work lawfully performed, and neither party has further liability in respect of it.

31. MANUFACTURING TOLERANCES

31.1 The Stone Products are hand-finished products fabricated from a natural or semi-natural material. The following tolerances apply, and a Stone Product within tolerance conforms to the Contract:

ITEM	TOLERANCE
Length and width of a fabricated piece	± 2mm
Straightness of a machined edge over 3m	± 2mm
Squareness of corners	± 1mm over 300mm
Seam gap (nominal adhesive line)	up to 2mm
Height differential (lippage) across a seam	up to 0.5mm
Scribe gap to an adjoining wall	up to 3mm
Cut-out dimensions	± 2mm
Overhang from cabinetry	± 3mm
Splashback height	± 2mm
Slab thickness	manufacturer's published tolerance
Flatness of installed benchtop over 1m	± 1.5mm
Radius of a curved edge	± 2mm
Polish gloss level	± 10 gloss units from the Approved sample

31.2 Tolerances are assessed under normal ambient lighting, from a standing position at 1.5m, perpendicular to the surface, and **not** under raking light, torchlight or LED strip lighting mounted at or near the plane of the surface.

31.3 The Customer acknowledges that under-cabinet, in-cabinet, plinth and pendant lighting mounted close to, or at a low angle to, a stone surface accentuates every undulation, seam, polish variation and surface characteristic, and that this is a feature of the lighting design and not a Defect. A tighter tolerance applies only if expressly accepted in writing by a director of the Company.

32. VARIATIONS

32.1 A Variation may be initiated by the Customer by written request, or by the Company where required by Site conditions, a change in law, unavailability of Material or health and safety. The Company need not carry out a requested Variation and may decline any that is impracticable, unsafe or inconsistent with good fabrication practice.

32.2 The Company will, within a reasonable time of a request, provide a Variation Form (Schedule 6) setting out the scope, the effect on the Price, and the effect on the programme.

32.3 A Variation is binding only when the Variation Form is signed or confirmed in writing by both parties. **No Variation is binding on the Company by reason of oral instruction, site instruction, email to a subcontractor, or conduct.** However, where the Customer requests a Variation and the Company carries it out at the Customer's direction without a signed Variation Form, the Customer must pay its reasonable value and may not rely on the absence of a signed Variation Form as a defence.

32.4 The Company may require payment of the full value of a Variation before commencing it, and in any event a Variation must be paid before the balance of the Price falls due under clause 10.1(c). A Variation entitles the Company to a reasonable extension of time.

32.5 The following are Variations chargeable to the Customer: changes to Material, colour, thickness, edge profile or cut-outs after Approval; changes to cabinetry, appliances or Site conditions after Templating; additional mobilisations; Standing Time; remaking of Stone Products damaged by the Customer or another trade; and out-of-hours work requested by the Customer.

PART F — DELIVERY, INSTALLATION AND COMPLETION

33. INSTALLATION

33.1 Where the Contract includes Installation Works, the Company will install the Stone Products with reasonable care and skill, in a proper and workmanlike manner, using suitable materials and in accordance with the Approved Working Drawings.

33.2 Any date given for Templating, delivery, installation or completion is an estimate given in good faith. **Time is not of the essence in respect of the Company's performance dates.** The Company is not liable for loss arising from failure to meet an estimated date but will use reasonable endeavours to meet it and will notify the Customer promptly of any material delay. The Company may deliver and install in stages and invoice each stage separately.

33.3 The Installation Works exclude: disconnection or reconnection of plumbing, gas or electrical services; removal or disposal of existing benchtops, splashbacks or fixtures (unless itemised); structural work, strengthening of cabinetry, or supports, brackets or corbels; tiling, painting, plastering, waterproofing or making good; sealing of any joint to a waterproofing standard; supply or installation of sinks, taps, cooktops or appliances (although the Company will set an undermount sink where itemised); and final cleaning beyond removal of the Company's own debris.

33.4 The Company will silicone-seal junctions between the Stone Products and adjoining surfaces where required for a neat finish. Silicone is a consumable with a limited service life, is excluded from the warranty in clause 49, and is not a waterproofing membrane. On completion the Company will remove its own tools, offcuts (subject to clause 46), packaging and debris, and leave the installed surfaces broom-clean.

34. SITE READINESS

34.1 The Customer must ensure that, on each date the Company is scheduled to attend the Site, the following requirements (the **Site Readiness Requirements**) are met: safe, lawful, unobstructed and exclusive access along the whole Access Route; cabinetry complying with clause 35; all appliances, sinks, taps and fittings to be integrated on Site and available; abutting walls, windows and returns in their final position and finish; the Site clean, dry, weather-tight, adequately lit and ventilated; no other trade working in the immediate installation area; power (240V, 10A) and water within 15m; a clear laydown area of not less than 4m²; any required scaffolding, hoist, lift access, crane hardstand or traffic management in place and certified; any parking, loading zone or road closure permit obtained; all Site-specific inductions, permits and site rules notified to the Company at least two Business Days in advance; and the Site free of asbestos, hazardous substances and any hazard not disclosed in writing.

34.2 The Customer warrants that the Site Readiness Requirements are met on each scheduled attendance date, and must notify the Company at least two Business Days in advance if they will not be.

34.3 If the Company attends and the Site Readiness Requirements are not met, it may proceed at the Customer's risk or withdraw from the Site; in either case clause 44 applies. The Company need not work in, and may withdraw from, any Site it reasonably considers unsafe; withdrawal on safety grounds is not a breach by the Company.

35. CABINETRY REQUIREMENTS

35.1 The Customer is responsible for ensuring that the cabinetry on which the Stone Products are installed is level to within 2mm over 3m and 1mm over 1m; is securely fixed and will not move or settle; provides continuous support along all bearing lines with no gap greater than 3mm; includes cross-rails or a continuous top beneath any sink or cooktop cut-out or narrow section; can bear the dead load of the Stone Products (which may exceed 60kg/m² for 20mm stone and 90kg/m² for 30mm stone) plus imposed loads without deflection; includes engineered support, provided by the Customer, for any overhang exceeding 300mm (20mm material) or 350mm (30mm material); is set out to the dimensions recorded at

Templating and not adjusted afterwards; and, where a waterfall end, mitred apron or full-height end panel is specified, includes a substrate or support of the dimensions notified by the Company.

35.2 The Company is not liable for any Defect, cracking, deflection, breakage or misalignment caused or contributed to by non-compliant cabinetry, and any remedial work is a Variation.

35.3 The Company may notify the Customer that cabinetry is non-compliant; the Customer must rectify it at its cost. If the Customer requires the Company to proceed regardless, it does so at its own risk and releases the Company from liability for any consequence of the non-compliance, other than liability that cannot be excluded at law.

36. BUILDER RESPONSIBILITIES

36.1 Where a builder, head contractor or project manager is engaged, the Customer must procure that the builder coordinates trades so the Site meets the Site Readiness Requirements on each scheduled date; gives at least five Business Days' notice of any programme change; provides a safe Site, a site-specific safety plan and induction, and complies with clause 43; protects the installed Stone Products from damage by other trades, construction dust, foot traffic, impact, chemical spillage and point loading; does not stand or kneel on, or place ladders, tools, plant or materials on, the Stone Products, or use them as a work bench, cutting surface or scaffold platform; ensures no cutting, grinding, drilling or coring is performed on or near them; and makes good all penetrations, services and finishes before the Company attends.

36.2 Damage occurring after installation is presumed to have been caused by a person other than the Company unless the Customer proves otherwise on the balance of probabilities. This clause does not reverse the onus of proof in respect of a claim under the CGA by a Consumer.

37. DESIGNER RESPONSIBILITIES

37.1 Where an architect, designer or specifier is engaged, the Customer must procure that the designer selects a Material fit for the Customer's intended use having regard to clauses 51 to 59, and advises the Customer of its characteristics and limitations; does not represent that any Material is impervious, stain-proof, scratch-proof, heat-proof, chip-proof or maintenance-free; designs cabinetry, supports and overhangs in accordance with clause 35; specifies lighting having regard to clause 31.3; provides accurate, coordinated drawings and appliance schedules; and issues Approvals within the time required by clause 29.

37.2 The Company is not responsible for the adequacy of any design, specification or drawing prepared by any person other than the Company, and does not undertake, and is not to be treated as having undertaken, any design responsibility in respect of the Site, the building or the cabinetry. Where the Company prepares a Working Drawing from information supplied by a designer, its obligation is to fabricate in accordance with that information and it has no obligation to check it.

38. CUSTOMER RESPONSIBILITIES

38.1 The Customer must, at its own cost: provide complete, accurate and timely information, drawings, specifications and Approvals; ensure the Site meets the Site Readiness Requirements; obtain all consents, permits and approvals required, including building consent, body corporate consent and landlord's consent; arrange, coordinate and pay for all plumbing, electrical, gas, cabinetry, tiling, painting and appliance work; protect the Stone Products after installation; pay all amounts when due; and comply with clause 59 and Schedule 8.

38.2 The Customer must not, and must ensure no person on its behalf does: alter, cut, drill, grind, polish or modify the Stone Products; apply any sealer, cleaner, coating or chemical other than as permitted by Schedule 8; subject the Stone Products to point loading, impact or thermal shock; or engage a third party to perform remedial work during the Defects Liability Period without first giving the Company the opportunity to inspect and remedy under clause 60.

38.3 Breach of clause 38.2 voids the warranty in clause 49 in respect of the affected Stone Products, to the extent the breach caused or contributed to the matter complained of.

39. PLUMBING

39.1 The Company is not a licensed plumbing practitioner and does not perform plumbing work under the Plumbers, Gasfitters, and Drainlayers Act 2006. The Customer must engage a licensed plumber to disconnect existing services and to connect all sinks, basins, taps, wastes, mixers and appliances after installation.

39.2 Where the Quotation includes setting an undermount sink or basin, the Company will bond it to the underside of the Stone Products using an appropriate adhesive and support system. The Company does not warrant the sink or basin itself, any plumbing connection to it, or the sink or basin against failure caused by the plumber's installation, over-tightening, movement of cabinetry, or thermal cycling.

39.3 The Customer must not permit any plumber to bear down on, lever against, or apply load to the Stone Products, and must ensure at least 24 hours elapse after installation before water is run to the Stone Products, to allow adhesives to cure. The Company is not liable for water damage, leaks or consequential loss arising from plumbing work performed by any person other than the Company.

40. ELECTRICAL

40.1 The Company is not a licensed electrical worker and does not perform prescribed electrical work under the Electricity Act 1992. The Customer must engage a registered electrician to disconnect and reconnect all electrical services, including cooktops, ovens, waste disposal units, powerpoints and lighting.

40.2 Where a cut-out is required for a powerpoint, appliance or fitting, the Customer must provide its exact position and dimensions before fabrication. The Company is not liable for any electrical fault, non-compliance or damage arising from electrical work performed by any person other than the Company.

41. APPLIANCE INSTALLATION

41.1 The Customer must supply the actual appliance, or the manufacturer's current published installation template and cut-out specification, before fabrication. Where it supplies a template or specification rather than the appliance, it warrants its accuracy and currency and bears the cost of any remake if it proves inaccurate or superseded. The Company installs Stone Products around appliances; it does not install, commission, level or connect appliances.

41.2 The Customer must ensure that the appliance manufacturer's requirements for clearance, ventilation, heat shielding and insulation are complied with, that any heat-generating appliance is installed with the manufacturer's specified heat barrier between the appliance and the Stone Products, and that no appliance is installed in a manner that transmits heat directly to the Stone Products.

41.3 The Company is not liable for cracking, discolouration, delamination or heat damage caused by an appliance installed contrary to the manufacturer's requirements, or by the absence of a heat barrier (clause 58).

42. HEAVY LIFTING, CRANEAGE AND ACCESS

42.1 Stone Products are heavy, rigid and brittle. A single benchtop piece may exceed 200kg.

42.2 **Standard access** means: the Company's vehicle may stand lawfully within 20m of the point of installation; the Access Route is level or has no more than six steps and is not less than 900mm wide at every point; every doorway and turning point permits a piece of the fabricated dimensions to pass; the installation area is on the ground floor or served by a goods lift of adequate capacity and dimensions; and no piece must be lifted more than 1.2m vertically.

42.3 Where standard access is not available, the Customer must at its cost provide such craneage, hoisting, hiab, gantry, scaffolding, temporary works, traffic management, road closure, footpath licence or additional labour as is necessary for safe delivery and installation. The Company will advise its requirements following Site inspection or Templating.

42.4 Where the Company arranges craneage or hoisting at the Customer's request, it does so **as the Customer's agent**. The Customer is liable for the cost and for any standing time, cancellation charge or additional lift. The Company is not liable for the acts or omissions of a crane operator, rigger or hoist provider engaged on the Customer's behalf, save to the extent of the Company's own negligence in selecting that provider.

42.5 The Customer warrants that the Access Route and any hardstand, crane pad, deck, balcony, suspended slab or scaffold used is structurally adequate for the loads imposed, and indemnifies the Company against any loss arising from its inadequacy.

42.6 The Company may decline to lift, carry or install any Stone Product where it reasonably considers doing so would create a risk to health or safety, or a risk of damage to the Stone Product or the building; any resulting delay is not a breach by the Company, and clause 44 applies. Where a Stone Product cannot be brought to the point of installation because of access constraints not disclosed before fabrication, the Customer is liable for the cost of remaking it in smaller pieces, including any additional seam, to which clause 30.2 applies.

43. HEALTH AND SAFETY

43.1 Each party acknowledges that it may be a PCBU under the HSWA and that, where they have overlapping duties in relation to the same matter, each must so far as is reasonably practicable consult, cooperate with and coordinate activities with the other under section 34 of the HSWA.

43.2 The Customer must, so far as is reasonably practicable, ensure the Site is without risks to health and safety, including to the Company's workers; identify and notify the Company in writing, before it attends Site, of all known or suspected hazards, including asbestos, lead paint, unstable structures, live services, confined spaces, work at height and the presence of other trades; provide the site-specific safety plan and site rules; ensure any required traffic management, edge protection, fall protection and exclusion zone is in place; and ensure no person interferes with the Company's exclusion zone or plant.

43.3 The Company will comply with its duties under the HSWA and applicable regulations; ensure its workers are trained, inducted and supervised; provide appropriate personal protective equipment; apply engineering controls (including wet cutting, on-tool water suppression and local exhaust ventilation) to minimise exposure to respirable crystalline silica so far as is reasonably practicable, and maintain airborne concentrations below the applicable workplace exposure standard; and maintain a health monitoring programme for exposed workers.

43.4 **Nothing in the Contract purports to transfer, exclude, limit or modify any duty imposed by the HSWA.** Section 29 of the HSWA renders void any term purporting to do so. No indemnity in these Terms extends to any fine or infringement fee imposed under the HSWA (clause 67.3).

43.5 Either party may direct that work cease immediately where it reasonably believes there is a serious risk to health or safety. No liability attaches to a party for a cessation properly directed under this clause.

44. DELAYS, ABORTIVE VISITS AND STANDING TIME

44.1 Where the Company is delayed, prevented or disrupted by the Customer's failure to meet the Site Readiness Requirements, to give a required Approval, or to pay when due; by a Variation; by the act, omission, default or delay of any person for whom the Customer is responsible; by unsafe Site conditions; by inability to access the Site at the scheduled time; or by a Force Majeure Event — the Company is entitled to a fair and reasonable extension of time and, except for a Force Majeure Event, to payment of the costs in clause 44.2.

44.2 The Company may charge, and the Customer must pay: **Standing Time** at $150 per person per hour (plus GST) from the scheduled start time, minimum two hours; an **abortive visit** charge of $650 per visit (plus GST) where the Company attends and is unable to proceed; the cost of any additional mobilisation, plant, crane, hoist or traffic management; any third-party charge levied on the Company as a result of the delay; and storage charges under clause 45.

44.3 The Customer must give at least two Business Days' notice to reschedule or cancel a Templating or installation appointment; if less notice is given, the abortive visit charge applies.

44.4 The rates in clause 44.2 are a genuine pre-estimate of the Company's loss, reflecting its fixed cost of maintaining installation crews, plant and vehicles and the difficulty of redeploying them at short notice.

44.5 An extension of time is the Customer's exclusive remedy for delay by the Company, and the Company is not liable for any loss, cost, expense or liquidated damages arising from delay, save to the extent liability cannot lawfully be excluded.

45. STORAGE

45.1 The Company will notify the Customer when the Stone Products are fabricated and ready for delivery or installation.

45.2 If the Customer cannot or will not take delivery, or the Site is not ready, within 10 Business Days of that notice: the Company may store the Stone Products at its premises or a third-party facility; it may charge storage at $45 per square metre per month (plus GST), or the actual third-party charge if higher, minimum one month; the Stone Products are stored at the Customer's risk and the Customer must insure them under clause 22.2; the balance of the Price becomes immediately due and payable notwithstanding non-delivery; and the Company is not liable for deterioration, marking, staining, warping, chipping or other damage in storage, other than damage caused by its negligence.

45.3 If Stone Products remain in storage for more than six months and any amount is unpaid, the Company may, after 20 Business Days' written notice and an opportunity to pay, sell or dispose of them and apply the proceeds against amounts owing. The Customer remains liable for any shortfall and the Company must account for any surplus. This clause does not limit the Company's rights under the PPSA.

46. OFFCUTS

46.1 **Offcut** means any piece of Material remaining after fabrication, including remnant slab, cut-out drops (such as sink and cooktop drops), edge strips, trim and other surplus Material, whether or not the Customer has been charged for the whole Slab under clause 9.3.

46.2 Where the Customer has been charged for the whole of a Slab under clause 9.3, the Customer may collect the Offcuts from that Slab in accordance with this clause. Where the Customer has been charged on a fabricated-square-metre basis, the Offcuts remain the property of the Company and this clause does not apply.

46.3 **The Company does not deliver Offcuts.** Offcuts are not transported to the Site and are not left on Site after installation. They must be collected by the Customer from the Company's fabrication facility during normal business hours.

46.4 **Offcuts remain available for collection by the Customer for a period of seven (7) calendar days after Practical Completion.**

46.5 **After the expiry of that seven-day period the Company may dispose of, recycle, sell or otherwise deal with the Offcuts without further notice to the Customer, and without any obligation to account to the Customer for their value or for any proceeds.** Title in any uncollected Offcut passes to the Company on expiry of that period.

46.6 The Customer acknowledges that the seven-day period is reasonable, having regard to the cost, space and health and safety burden of storing and handling stone remnants, and to the fact that the Company gives notice of Practical

Completion under clause 47; that Offcuts are heavy, brittle and hazardous, and are collected at the Customer's risk; that the Company gives no warranty as to the dimensions, condition, quantity, appearance or fitness for any purpose of any Offcut, which are collected "as is, where is"; that the Customer must provide its own vehicle, lifting equipment, labour and restraints and comply with the Company's site induction and safety rules; and that the Company will not cut, dress, polish, package or load an Offcut except at the Customer's cost and risk and subject to clause 30.5.

46.7 Nothing in this clause requires the Company to retain any Offcut which, in its reasonable opinion, is waste, dust or slurry, is of no practical use, or presents a health, safety or storage risk.

47. PRACTICAL COMPLETION

47.1 **Practical Completion** occurs when the Stone Products have been installed and the Installation Works are complete except for minor omissions or minor Defects which do not prevent the Stone Products from being reasonably capable of use for their intended purpose, and which the Company can remedy without unreasonably interfering with that use. The Company will give the Customer a Practical Completion Certificate (Schedule 5) when, in its reasonable opinion, Practical Completion has been achieved.

47.2 Practical Completion is deemed to occur on the earliest of: the date stated in a Practical Completion Certificate signed by both parties; the date the Customer, or any person on its behalf, uses the Stone Products for their intended purpose; the date the Company issues a Practical Completion Certificate, where the Customer does not within five Business Days give written notice specifying with particularity why Practical Completion has not been achieved; and the date the Company would have achieved Practical Completion but for a delay attributable to the Customer.

47.3 On Practical Completion: the balance of the Price becomes due and payable; the Defects Liability Period commences; the seven-day Offcut collection period under clause 46.4 commences; the Customer assumes full responsibility for the care, protection and maintenance of the Stone Products; and the Company's obligation to protect them ceases.

47.4 The Customer must at Practical Completion inspect the Stone Products in normal lighting conditions and record any apparent Defect on the Practical Completion Certificate. A Defect reasonably apparent on such an inspection which is not recorded is deemed accepted. This clause does not apply to a Defect not reasonably discoverable on such an inspection, and does not limit the rights of a Consumer under the CGA.

47.5 The Customer must not withhold payment, or refuse to sign the Practical Completion Certificate, by reason of a minor omission or minor Defect. Its remedy for such matters is under clause 48.

PART G — WARRANTY, DEFECTS AND MATERIAL CHARACTERISTICS

48. DEFECTS LIABILITY PERIOD

48.1 The **Defects Liability Period** is 12 months from Practical Completion.

48.2 During that period the Customer must notify the Company of any Defect by delivering a completed Defect Notification Form (Schedule 7) within 10 Business Days of becoming aware, or of when it ought reasonably to have become aware, of the Defect. The form must specify the Defect with particularity, identify its location, and attach photographs taken in normal ambient lighting.

48.3 The Company may enter the Site on reasonable notice to inspect. The Customer must provide access and must not permit any person to repair, alter, disturb or conceal the alleged Defect before that inspection.

48.4 Where the Company accepts that a Defect exists, it will at its election and at its own cost repair the Defect, remake and reinstall the affected Stone Product, or refund the portion of the Price attributable to it. **That is the Customer's sole and exclusive contractual remedy in respect of a Defect**, subject to clauses 61 and 62. Remedial work will be carried out within a reasonable time with reasonable care and skill, and does not extend the Defects Liability Period, save that the repaired or replaced Stone Product carries the balance of the original period or three months from completion of the remedial work, whichever is longer.

48.5 Where the Company inspects and the matter proves not to be a Defect, the Customer must pay an inspection charge of $450 (plus GST) and associated travel costs. **This clause does not apply where the Customer is a Consumer.**

48.6 Failure to notify within the time in clause 48.2 does not of itself extinguish the Customer's rights, but the Company is not liable for any loss or increase in the cost of rectification attributable to the delay.

49. WORKMANSHIP WARRANTY

49.1 Subject to clauses 51 to 60, the Company warrants to the Customer that, for **ten (10) years** from Practical Completion, its fabrication and installation workmanship will be free from defects in workmanship, meaning that the Stone Products were fabricated in accordance with the Approved Working Drawings and within the tolerances in clause 31; seams and joins were formed, adhered and finished in accordance with good industry practice; the Stone Products were installed level, plumb, adequately supported and adhered, having regard to the cabinetry provided; and cut-outs were formed with appropriate radii and, where required, reinforcement.

49.2 The warranty is given in the form of Schedule 4, is personal to the Customer, and is not transferable, save that the Company will not unreasonably withhold consent to an assignment of its benefit to a subsequent owner of the Site on written request.

49.3 The warranty is conditional on payment in full of the Price and all other amounts owing, and on compliance by the Customer with clauses 38.2 and 59 and Schedule 8. It does not extend to the Material itself (clause 50), to any characteristic in clauses 51 to 59, to any matter in clause 60, or to silicone, adhesive, sealant, sealer or any consumable. It is limited to the remedies in clause 48.4.

49.4 The warranty is in addition to, and does not derogate from, any right or remedy under the CGA, the FTA, the Building Act 2004 or any other statute.

50. MANUFACTURER WARRANTIES

50.1 The Company is a fabricator and installer, not a manufacturer of Material. Where the manufacturer of a Material offers a warranty, the Company will on request and to the extent it is able assign or pass through its benefit, or facilitate a

claim under it. Any manufacturer's warranty is subject to that manufacturer's own terms, exclusions, registration requirements and claims procedure.

50.2 The Company gives no warranty in respect of the Material itself, its composition, its performance, or the accuracy of any statement by its manufacturer, and to the maximum extent permitted by law is not liable for any defect in the Material as supplied to the Company.

50.3 Where the Customer has a claim in respect of a defect in the Material, the Company will use reasonable endeavours to pursue that claim against the manufacturer or supplier on the Customer's behalf and will account to the Customer for any amount recovered, less its reasonable costs. The Company's liability in respect of such a defect is limited to the amount so recovered, except where the Customer is a Consumer or where the Company's own act or omission caused or contributed to the defect.

51. NATURAL STONE — GENERAL DISCLAIMER

51.1 Granite, marble, quartzite, travertine, limestone, onyx and comparable Materials are **natural products formed by geological processes**. They are quarried, not manufactured. No two slabs, and no two areas of the same slab, are identical.

51.2 The following are inherent natural characteristics, are **not Defects**, do not constitute a failure to comply with the Contract, and are not covered by any warranty given by the Company: variation in colour, tone, shade and translucency within a slab, between slabs from the same block, and between blocks, bundles and batches; variation in the direction, width, density, contrast and continuity of veining; fissures, dry seams, glass seams and stylolites (clause 57); pits, pinholes, voids and open pores; mineral inclusions and the differential hardness, reflectivity and etchability they produce; resin, epoxy and mesh used in slab consolidation (clause 57); variation in the depth and consistency of any finish; variation in porosity, absorbency and susceptibility to staining; natural weathering and patination over time; and a small number of chips, nicks or bruises at edges and cut-outs which are filled or dressed in accordance with good industry practice.

51.3 Natural stone is **porous**: it absorbs liquids to some degree. Sealing reduces, but does not eliminate, absorption. **A sealed surface is not a stain-proof surface.** Natural stone is **brittle**: it will chip, crack or fracture under impact, point loading, thermal shock, or deflection of the substrate.

51.4 The Customer acknowledges that it has selected the Material with knowledge of these characteristics and does not rely on any representation by the Company as to the appearance, performance or durability of any natural stone other than one expressly recorded in the Contract.

52. MARBLE, TRAVERTINE, LIMESTONE AND ONYX

52.1 These are **calcium carbonate** stones: soft, porous and chemically reactive. The Customer acknowledges and accepts that they **etch** on contact with acids (including lemon juice, vinegar, wine, tomato, citrus, carbonated drinks, coffee, many household cleaners and some cosmetics) — etching is an immediate chemical reaction that dulls or lightens the surface and **is not preventable by sealing**; that they **stain** readily, particularly with oil, wine, coffee, turmeric, rust and dyes; that they **scratch** and abrade in ordinary use and will develop a patina of fine scratches and dulled areas; that travertine and some limestones contain factory-filled voids which may shrink, discolour or become dislodged, and further voids may open as the surface wears; that onyx is translucent, exceptionally fragile and typically reinforced; and that **the appearance of these Materials will change over time.**

52.2 Etching, staining, scratching and patination of calcium carbonate stone are not Defects and are excluded from all warranties given by the Company.

52.3 **The Company recommends against the specification of marble, travertine, limestone or onyx for kitchen benchtops, bar tops, laundry tops, vanity tops in frequent use, or any surface likely to be exposed to acid or oil. Where the Customer nevertheless specifies such a Material for such a use, it does so against the Company's**

recommendation, having been informed of these characteristics, and the Company is not liable for any etching, staining, scratching or patination.

53. QUARTZITE AND GRANITE

53.1 Quartzite is a metamorphic silicate stone; granite is an igneous silicate stone. Both are harder and more acid-resistant than marble, but neither is acid-proof or heat-proof.

53.2 The Customer acknowledges that **many Materials sold in the trade as "quartzite" are in fact dolomitic marble, marble or a hybrid, and are therefore acid-sensitive** — nomenclature in the international stone trade is commercial rather than petrological. The Company sources Material by the supplier's trade name and does not petrologically test Material. Where the Customer requires certainty as to mineral composition or acid-resistance, it must, at its cost and before Approval, obtain an independent petrological analysis or acid-sensitivity test.

53.3 The Customer further acknowledges that quartzite is extremely hard and abrasive, increasing fabrication time, tooling cost and the incidence of chipping at edges and cut-outs; frequently contains fissures, glass seams and internal stresses and may require rodding or resin consolidation; that granite and quartzite are porous and will stain if not sealed and maintained; that both are subject to thermal shock (clause 58.2); and that some quartzites contain iron minerals which may oxidise on exposure to moisture, producing rust marks.

53.4 The Company does not warrant that any Material described as "quartzite" is acid-resistant, and clause 52 applies to any Material that proves to be calcium carbonate based.

54. PORCELAIN AND SINTERED STONE

54.1 Porcelain and sintered stone are manufactured ceramic surfaces. The Customer acknowledges that the decorative pattern of most porcelain and some sintered surfaces is a print applied to the surface or to a shallow depth, so that where the pattern is not full-bodied the exposed edge, mitre or cut-out will not match the face; that mitred edges are formed by bonding two pieces cut at 45°, the mitre line is visible on close inspection, and a fine dark line at the apex is normal; that pattern repeat is a feature of printed surfaces; that these Materials, while hard and scratch-resistant, are thin and brittle and are **highly susceptible to chipping at edges and cut-outs and to fracture from point loading, impact and substrate deflection**, so that full and continuous support is essential and clause 35 applies with particular force; and that different finishes differ markedly in their tendency to show fingerprints, water marks, cleaning residue and metal scuffs.

54.2 Chipping occurring after Practical Completion is presumed to result from impact or point loading and is not a Defect, unless the Customer proves it results from a fabrication or installation fault.

55. ENGINEERED STONE

55.1 Engineered stone (quartz composite) is a manufactured product comprising crushed mineral aggregate, polymer resin binder and pigment. The Customer acknowledges that:

(a) it is manufactured in batches, and colour, tone, particle size, veining and gloss vary between batches. The Company cannot guarantee a match between slabs from different batches, or between a Slab and a showroom sample, offcut, or previously installed material;

(b) it contains polymer resin and is **not heat resistant**. Direct or radiant heat from a pot, pan, tray, appliance or trivet-less cookware will cause discolouration, scorching, blistering, delamination, resin burn or cracking. Such damage is permanent, is caused by the Customer's use, and is excluded from all warranties (clause 58.2);

(c) it is **not UV stable**: it will fade, yellow, discolour and may distort on prolonged exposure to direct sunlight. It must not be installed outdoors, in a conservatory, or in any position exposed to sustained direct sunlight unless the manufacturer

expressly certifies it for that application. Where the Customer specifies engineered stone for such a position against the Company's advice, the Company is not liable for any consequence;

(d) pale and highly reflective colours show scratches, dulling and wear more readily, and the surface will stain if strong chemicals, solvents, dyes, oils or permanent markers are left in contact with it;

(e) where the manufacturer offers a warranty, that warranty is the Customer's primary remedy in respect of the Material (clause 50); and

(f) it is subject to thermal expansion and contraction, and hairline movement at seams and against restrained edges may occur.

55.2 **Respirable crystalline silica.** The Customer acknowledges that engineered stone typically contains a high proportion of crystalline silica, and that cutting, grinding, drilling, polishing or otherwise mechanically working it generates respirable crystalline silica, exposure to which causes silicosis, including accelerated silicosis. The installed and undisturbed surface presents no such risk; the risk arises during processing. The Company applies dust controls under clause 43.3 and does not dry-process engineered stone (clause 30.5). **The Customer must not permit any person to cut, drill, grind, core or otherwise mechanically work the installed Stone Products** — whether to install a tap, soap dispenser, power outlet or otherwise — unless that person is competent and applies wet-cutting or on-tool extraction controls and appropriate respiratory protective equipment. The regulatory position in New Zealand is under review, and clause 30.6 applies.

56. COLOUR AND PATTERN VARIATION

56.1 Samples, offcuts, showroom displays, photographs, digital images, brochures and website representations are **indicative only**. They are not, and must not be relied on as, a representation of the colour, tone, veining, pattern or finish of the Material that will be supplied. The Customer's exclusive means of ascertaining the appearance of the Material to be supplied is inspection and Approval of the actual Slabs under clause 26 and of the Digital Slab Layout under clause 28.

56.2 The Company is not liable for any difference between the Stone Products supplied and any sample, image or display; material previously supplied to the Customer or any other person; any adjacent surface, cabinetry, tile, splashback or paint colour; or different Stone Products supplied under the same Contract from different Slabs or batches.

56.3 The Customer must satisfy itself as to colour, pattern and finish before Approval. Once a Slab or Digital Slab Layout is Approved, clause 26.3 applies.

57. RESIN FILLING, FISSURES AND PITTING

57.1 Most natural stone slabs are treated at the processing plant with resin, epoxy, polyester, mesh backing or fibreglass to consolidate the slab, fill natural voids, and enable it to survive transport and fabrication. This treatment is applied before the Company receives the Slab, is normal industry practice, and materially improves the usability of the Material.

57.2 The Customer acknowledges that resin fill may be visible, may differ in colour, gloss and texture from the surrounding stone, and may become more visible over time or after honing, polishing, or exposure to heat and UV; that resin fill may shrink, craze, discolour or become dislodged; that mesh or fibreglass backing may be visible from beneath and must not be removed; and that **pitting** — small natural voids exposed on the surface, particularly in honed and leathered finishes — is not a Defect.

57.3 **A fissure** is a naturally occurring separation along the intercrystalline boundaries of the stone. **A fissure is not a crack.** Fissures are present in most natural stone, may be visible on the surface, may be felt with a fingernail, may extend through the slab, and do not of themselves indicate structural weakness or a Defect. **A crack**, by contrast, is a separation caused by stress, impact or handling, and is a Defect only if it results from the Company's fabrication or installation. The

Company may fill fissures, pits and voids with colour-matched resin or adhesive and reinforce vulnerable sections with rodding. The presence of fissures or pits is not a ground for rejection of a Slab after Approval under clause 26.

57.4 Where a fissure opens into a crack during or after fabrication as a result of a latent weakness in the Slab, and not as a result of the Company's handling, the Company's liability is limited to replacing the affected piece using Material from the Customer's Slab if available, or otherwise to the remedies in clause 50.3.

58. ETCHING, HEAT, UV, CHIPS, SCRATCHES AND MOVEMENT

58.1 **Etching** is a chemical reaction between an acid and calcium carbonate. It is not staining and is not removable by cleaning. It occurs on marble, travertine, limestone, onyx and some stones sold as quartzite. Etching is excluded from all warranties and is not a Defect. Refinishing an etched surface, where possible, is chargeable.

58.2 **Heat.** No Stone Product supplied by the Company is heat-proof. Engineered stone is permanently damaged by direct heat (clause 55.1(b)). Natural stone and sintered stone, although more heat-tolerant, are subject to **thermal shock**: rapid, localised temperature change causes differential expansion and can crack the stone. Seams, cut-outs, resin fill and areas adjacent to appliances are particularly vulnerable. The Customer must use trivets, heat pads and boards, and must not place hot cookware, appliances or trays directly on any Stone Product. Heat damage is excluded from all warranties and is not a Defect.

58.3 **UV exposure.** Engineered stone is not UV stable (clause 55.1(c)). Some natural stones and resin fills also fade, yellow or change colour on prolonged UV exposure. UV damage is excluded from all warranties.

58.4 **Chips.** Stone is brittle. Chipping at edges, corners, cut-outs and seams is caused by impact and point loading. Chipping occurring after Practical Completion is excluded from all warranties unless the Customer proves it was caused by the Company's fabrication or installation. The Company will repair chips where practicable at the Customer's cost; a repair is visible on close inspection.

58.5 **Scratches and staining.** All Stone Products will scratch; softer stones scratch readily, and highly polished and pale surfaces show scratches most. Scratching in ordinary use is not a Defect. Staining is the absorption of a substance into the pore structure. Both are excluded from all warranties. Sealing reduces but does not prevent staining, and sealer must be reapplied periodically in accordance with Schedule 8.

58.6 **Movement.** Buildings move; timber cabinetry shrinks, swells and settles. Seasonal and structural movement may cause hairline separation at seams, silicone joints and scribes. Movement of this kind occurring more than 90 days after Practical Completion is not a Defect.

59. CARE AND MAINTENANCE

59.1 The Customer must care for and maintain the Stone Products in accordance with **Schedule 8 (Stone Care Guide)** and any manufacturer's instructions. In particular the Customer must wipe spills immediately, particularly acids, oils, wine and dyes; use only pH-neutral cleaners formulated for stone; never use abrasive pads, scouring powders, bleach, ammonia, oven cleaner, drain cleaner, acidic cleaners (including vinegar and lemon), alkaline degreasers or solvents; use chopping boards, trivets and heat pads; avoid point loading, standing or sitting on the Stone Products; not place heavy objects on unsupported overhangs; and re-seal natural stone at the intervals in Schedule 8, retaining evidence of doing so.

59.2 Failure to comply with this clause voids the warranty in clause 49 in respect of the affected Stone Products, to the extent the failure caused or contributed to the matter complained of.

59.3 Sealing is a maintenance obligation of the Customer, not a warranted product characteristic. Where the Company applies a sealer at installation it does so as a courtesy, and the sealer is a consumable excluded from clause 49.

60. WARRANTY EXCLUSIONS AND CLAIMS PROCEDURE

60.1 No warranty given by the Company extends to any matter caused by or arising from: any characteristic described in clauses 51 to 58; fair wear and tear; misuse, abuse, neglect, accident, or use contrary to Schedule 8; any act or omission of the Customer, or of any builder, plumber, electrician, cabinetmaker, tiler, painter, cleaner, other trade, occupier or third party; failure, movement, deflection, settlement or inadequacy of cabinetry, substrate, walls, floor or structure; alteration, cutting, drilling, repair or modification by any person other than the Company; impact, point loading, thermal shock, heat, UV exposure or chemical attack; failure to seal or re-seal natural stone; failure to notify a Defect in accordance with clause 48.2; a defect in the Material as supplied to the Company (clause 50); a Force Majeure Event; or any Site condition or design matter for which the Customer is responsible under clauses 34 to 42.

60.2 A warranty claim must be made in writing in the form of Schedule 7 and accompanied by the Contract number and date of Practical Completion, evidence of payment in full, photographs of the alleged Defect, and, where relevant, evidence of compliance with the sealing and maintenance requirements of Schedule 8.

60.3 The Company must be given a reasonable opportunity to inspect and to remedy before the Customer engages any other person. If the Customer engages another person without affording that opportunity, the Company is not liable for the cost of that person's work and the warranty in clause 49 ceases to apply to the affected Stone Product. The remedies in clause 48.4 are the Customer's exclusive contractual remedies for breach of the warranty in clause 49.

PART H — STATUTORY RIGHTS AND CONTRACTING OUT

61. CONSUMER GUARANTEES ACT 1993

61.1 **Consumers.** Where the Customer acquires Stone Products or Installation Works for personal, domestic or household use and is a Consumer under the CGA, the guarantees, rights and remedies conferred by the CGA apply and **nothing in these Terms excludes, restricts or modifies them**. Any provision purporting to do so is to that extent of no effect and severable under clause 77.1. Clauses 48 and 49 are in addition to, and not in substitution for, the Customer's rights under the CGA.

61.2 **Contracting out — business customers.** Where (a) the Company supplies in trade, (b) the Customer acquires in trade, (c) both parties are in trade, and (d) this agreement is in writing, then in accordance with **section 43(2) of the CGA** the parties agree that the provisions of the CGA do not apply to the supply of the Stone Products and the Installation Works under the Contract.

61.3 The Customer acknowledges and agrees that it is **fair and reasonable** that it be bound by clause 61.2, having regard to the matters in section 43(2B) of the CGA, and in particular that: it is acquiring for the purposes of a business and can pass on risk and cost to its own customers; the Price reflects the allocation of risk in these Terms and would be materially higher if the CGA guarantees applied; the Company gives the substantial express warranty in clause 49 and Schedule 4, longer in duration than the Company's likely exposure under the CGA; the Customer has, or can obtain, its own insurance in respect of the risks allocated to it; the Customer has had the opportunity to negotiate the terms, to seek independent legal advice, and to obtain supply from an alternative supplier on different terms; and the parties are of comparable commercial sophistication.

61.4 Where the Customer acquires in trade but supplies the Stone Products, or incorporates them into goods or land supplied, to a person who is a Consumer, the Customer must not represent to that person that the CGA does not apply to them, and acknowledges that section 43(3) of the CGA preserves that person's rights notwithstanding clause 61.2.

61.5 If the Customer is in fact a Consumer, clause 61.2 does not apply and clause 61.1 governs. The Company does not represent, and nothing in these Terms is to be read as representing, that a Consumer's rights under the CGA are or may be excluded, restricted or modified; any such representation would contravene section 13(i) of the FTA and section 43(3) of the CGA.

62. FAIR TRADING ACT 1986

62.1 **Consumers.** Nothing in these Terms excludes, restricts or modifies any right or remedy the Customer has under the FTA where the Customer is not acquiring in trade.

62.2 **Contracting out — business customers.** Where (a) the Company is in trade, (b) the Customer is in trade, (c) the parties are contracting in trade, and (d) this agreement is in writing, then in accordance with **section 5D of the FTA** the parties agree that **sections 9, 12A, 13 and 14(1) of the FTA do not apply** to the Contract or to any conduct or representation of the Company in connection with it, whether occurring before or after the Contract was formed.

62.3 The Customer acknowledges and agrees that it is **fair and reasonable** that it be bound by clause 62.2, having regard to the matters in section 5D(2) of the FTA and for the reasons in clause 61.3, which it adopts for this purpose.

62.4 Clause 62.2 does not apply, and is of no effect, in respect of any conduct that is fraudulent or dishonest; any conduct occurring where the Customer is not in trade; and any provision of the FTA in respect of which contracting out is not permitted, including sections 5C and 5D themselves, the unfair contract terms regime, Part 3 (safety of goods and services) and Part 4A.

62.5 The Customer acknowledges that before entering into the Contract it relied on its own inspection, judgment and enquiries and on the express terms of the Contract, and not on any representation of the Company not expressly recorded in it.

63. UNFAIR CONTRACT TERMS

63.1 The Company acknowledges that a term of a standard form consumer contract, or of a standard form small trade contract as defined in section 46H of the FTA, may be declared unfair by a Court under section 46I of the FTA.

63.2 Each term of these Terms is included because it is reasonably necessary to protect the legitimate interests of the Company as a fabricator working with brittle, high-value, non-substitutable material, in a supply chain over which it has limited control, at Sites it does not control.

63.3 If a Court declares any term unfair, that term is severable under clause 77.1 and the remainder of these Terms continues in force. The Company will not apply, enforce or rely on a term declared unfair in relation to a contract of the same kind.

64. BUILDING ACT 2004

64.1 Where the Contract relates to building work in respect of a household unit within the meaning of section 362A of the Building Act 2004, the implied warranties in sections 362I to 362K of that Act apply, **nothing in these Terms excludes, restricts or modifies those warranties or the remedies available in respect of them** (section 362N), any inconsistent provision is to the extent of the inconsistency of no effect, and the Company will provide the disclosure information and prescribed checklist required by section 362D and the associated regulations, where applicable.

64.2 Nothing in these Terms limits the operation of section 393 of the Building Act 2004 (10-year longstop) or the Limitation Act 2010.

PART I — LIABILITY, INDEMNITY AND FORCE MAJEURE

65. LIMITATION OF LIABILITY

65.1 This Part applies to all claims against the Company, whether in contract, tort (including negligence), equity, under statute or otherwise, arising from the supply of Stone Products, the Installation Works, any advice, or any other act or omission of the Company.

65.2 **Aggregate cap.** To the maximum extent permitted by law, the Company's total aggregate liability under or in connection with a Contract is limited to the greater of (a) the Price paid by the Customer under that Contract, and (b) the amount actually recovered by the Company under any policy of insurance in respect of the claim. The Company's liability is reduced to the extent that any act or omission of the Customer, or of any person for whom the Customer is responsible, caused or contributed to the loss.

65.3 To the maximum extent permitted by law, the Company is not liable for any matter described in clauses 51 to 60; any loss arising from information, drawings, specifications or Approvals supplied by or for the Customer; any loss arising from the acts or omissions of any other trade or contractor at the Site; any loss arising from a Force Majeure Event; any loss arising from the Customer's failure to comply with clauses 34 to 43 or clause 59; or any defect in a Material as manufactured, save as provided in clause 50.

65.4 **Personnel and subcontractors.** Each exclusion, limitation and indemnity in favour of the Company applies also for the benefit of its directors, employees, agents and subcontractors. The Company holds the benefit of those provisions on trust for them, and any such person may enforce them. This clause is a term to which subpart 1 of Part 2 of the CCLA (contracts for the benefit of third parties) applies.

65.5 **Statutory limits.** Clauses 65.2, 65.3, 66 and 67 do not apply to, and nothing in these Terms limits, the Company's liability: for death or personal injury caused by the Company's negligence, to the extent that liability is not barred by the Accident Compensation Act 2001; for fraud, wilful misconduct or fraudulent misrepresentation; under the CGA, where the Customer is a Consumer and the CGA has not been validly excluded under clause 61.2; under the FTA, where it has not been validly excluded under clause 62.2; under sections 362I to 362K of the Building Act 2004; or for any other liability that cannot lawfully be excluded or limited.

65.6 The Customer acknowledges that the limitations in this Part are a fundamental basis on which the Company has agreed the Price, that it has had the opportunity to negotiate a higher limit for a higher price, and that this allocation of risk is fair and reasonable in all the circumstances.

66. CONSEQUENTIAL LOSS

66.1 To the maximum extent permitted by law, and subject to clause 65.5, the Company is not liable for any loss of profit, revenue, income, production, business, contract, opportunity or anticipated saving; loss of use or amenity, or cost of alternative accommodation; loss of goodwill or reputation; loss or corruption of data; liquidated damages, delay damages, holding costs, financing costs, or damages payable by the Customer to a third party; cost of removing, replacing or making good any cabinetry, splashback, tiling, plumbing, appliance, flooring or other work damaged or required to be removed in order to access or replace a Stone Product; or any indirect or consequential loss — even if the Company was advised of the possibility of it, and whether or not such loss arises directly.

66.2 Notwithstanding clause 66.1, where the Company is liable for a Defect and elects to remake and reinstall a Stone Product under clause 48.4, it will reinstate any silicone joint and adjoining finish disturbed by it in the course of that work, to a standard reasonably comparable to that existing before the work.

66.3 The parties acknowledge that clauses 65 and 66 record an agreed allocation of risk negotiated between commercial parties, and that the Company would not have entered into the Contract at the agreed Price without them.

67. INDEMNITIES

67.1 The Customer indemnifies the Company, and each of its directors, employees, agents and subcontractors, against all loss, damage, liability, cost and expense (including solicitor and own client costs) suffered or incurred as a result of or in connection with: any breach of the Contract by the Customer; any inaccuracy in information, drawings, dimensions, specifications or Approvals supplied by or for the Customer; any claim by a third party (including a subsequent owner or occupier of the Site) arising from the Customer's act or omission, or from any characteristic described in clauses 51 to 59; the Company's entry onto any premises under clauses 14.3(b), 18.4 or 19; the inadequacy of any Access Route, hardstand, structure or scaffold under clause 42.5; any claim that the Company has infringed a third party's Intellectual Property Rights by fabricating in accordance with a design supplied by the Customer; any unauthorised cutting, drilling, grinding or modification of the Stone Products; and the enforcement of the Company's rights under clauses 12, 13, 17, 18 and 19.

67.2 Each indemnity is a continuing obligation, independent of the Customer's other obligations, survives termination, and is reduced proportionately to the extent the loss was caused or contributed to by the Company's own negligence, breach or wilful misconduct. It is not necessary for the Company to incur expense or make payment before enforcing an indemnity.

67.3 **HSWA carve-out.** No indemnity in these Terms extends to any fine or infringement fee imposed for an offence under the HSWA, or to any liability the indemnification of which is prohibited by section 29 of the HSWA. To the extent an indemnity would otherwise so extend, it is severed.

68. TIME BAR

68.1 The Customer must give the Company written notice of any claim under or in connection with the Contract within (a) 10 Business Days of becoming aware, or of when it ought reasonably to have become aware, of the facts giving rise to the claim, and (b) in any event within 12 months of Practical Completion, except a claim under clause 49, which must be brought within the 10-year warranty period.

68.2 Failure to give notice within the period in clause 68.1(a) does not extinguish the claim, but the Company is not liable for any part of the loss that could have been avoided or mitigated had timely notice been given.

68.3 Any proceeding must be commenced within the period permitted by the Limitation Act 2010. Clause 68.1(b) does not apply where the Customer is a Consumer, and does not limit any right that cannot lawfully be limited.

69. FORCE MAJEURE

69.1 A **Force Majeure Event** is an event beyond the reasonable control of the affected party which prevents, hinders or delays its performance, including act of God; earthquake, flood, storm, volcanic activity, tsunami or landslide; fire or explosion; war, terrorism, riot or civil commotion; epidemic, pandemic, quarantine or public health order; strike or lockout (other than involving the affected party's own workforce); failure of utilities, telecommunications or transport networks; cyber attack; embargo, sanction, tariff, border closure or import restriction; failure of a supplier or quarry to deliver Material for reasons beyond the Company's control; shipping delay, port congestion or loss of cargo at sea; and any change in law or governmental order, including any restriction on engineered stone or crystalline silica. It does not include a party's inability to pay money.

69.2 The affected party must notify the other as soon as reasonably practicable, describing the event and its likely duration and effect. Its obligations are suspended for the duration of the event and the time for performance is extended accordingly. It must use reasonable endeavours to mitigate the effect and resume performance.

69.3 If a Force Majeure Event continues for more than 60 consecutive days, either party may cancel the affected Contract by written notice. On cancellation the Customer must pay for all Materials procured and all work performed to that date, together with the Company's unavoidable committed costs; the Company must refund the balance (if any) of the Deposit and any progress payments; and neither party has further liability in respect of the cancelled Contract.

PART J — GENERAL

70. INTELLECTUAL PROPERTY, SLABKAST AND CAD DRAWINGS

70.1 All Intellectual Property Rights in the Working Drawings, CAD files, shop drawings, templates, digital scans, Digital Slab Layouts, SlabKast files, nesting files, photographs, quotations, specifications, methodologies and know-how created by or for the Company remain the sole property of the Company.

70.2 The Company grants the Customer a non-exclusive, non-transferable, royalty-free licence to use the Working Drawings and Digital Slab Layouts solely for the purposes of the Contract and the Site. That licence is conditional on payment in full of the Price and terminates automatically if the Contract is terminated for the Customer's default.

70.3 The Customer must not, and must not permit any person to, copy, reproduce, adapt or reverse-engineer any Working Drawing, Digital Slab Layout or SlabKast file, use them in connection with any other site, project or supplier, or provide them to any competitor of the Company.

70.4 **SlabKast** and any other slab-layout software used by the Company is licensed to the Company by its owner. The Customer acquires no right, title or interest in that software, in any output of it beyond the licence in clause 70.2, or in any digital scan of a Slab.

70.5 The Customer grants the Company a licence to use any drawing, specification, design or brand it supplies for the purposes of the Contract, and warrants that the Company's use of that material will not infringe the rights of any person (clause 67.1 applies). Where the Company contributes to the design or detailing of a Stone Product, it retains all Intellectual Property Rights in that contribution.

71. CONFIDENTIALITY

71.1 **Confidential Information** means all information disclosed by one party to the other in connection with the Contract that is by its nature confidential, is designated as confidential, or that the receiving party knows or ought reasonably to know is confidential, including the Company's pricing, margins, supplier terms, methodologies, Working Drawings and customer lists, and the Customer's project and personal information.

71.2 Each party must keep the other's Confidential Information confidential, use it only for the purposes of the Contract, and disclose it only to those personnel, professional advisers, insurers and financiers who need to know it and are bound by equivalent obligations.

71.3 Clause 71.2 does not apply to information that is or becomes public other than through breach of this clause, was lawfully known before disclosure, is lawfully obtained from a third party without restriction, or is required to be disclosed by law, a Court or a regulator, provided such notice as is reasonably practicable is given. These obligations survive termination for three years, and indefinitely in respect of trade secrets.

72. PRIVACY

72.1 The Company collects, uses, stores and discloses personal information about the Customer, its directors, guarantors, employees and site contacts in accordance with the Privacy Act and its privacy policy.

72.2 Personal information is collected for the purposes of assessing creditworthiness and administering trade credit; forming and performing the Contract; communicating with the Customer and arranging Templating, delivery and installation; enforcing the Contract, including debt recovery and the exercise of security rights; meeting the Company's legal obligations, including under the HSWA and the CCA; and marketing the Company's goods and services where the individual has not opted out.

72.3 Personal information may be disclosed to credit reporting and debt collection agencies; the Company's solicitors, insurers, accountants and financiers; suppliers and subcontractors for the purpose of performing the Contract; and any person to whom disclosure is required or permitted by law. It may be held with cloud service providers located outside New Zealand, and the Company will comply with information privacy principle 12 before making any cross-border disclosure.

72.4 The individual concerned has the right under principles 6 and 7 of the Privacy Act to request access to and correction of personal information held about them. Requests should be directed to the Company's Privacy Officer at the address in clause 75.

72.5 The Customer authorises the Company to make the enquiries and disclosures described in clause 16.4 and this clause; warrants that where it provides the Company with personal information about any other individual it has obtained that individual's authorisation, has informed that individual of the matters in this clause, and has complied with principles 2 and 3 of the Privacy Act; and indemnifies the Company against any liability arising from breach of that warranty.

72.6 The Company will comply with Part 6 of the Privacy Act in respect of any notifiable privacy breach, and will not retain personal information longer than required for the purposes for which it may lawfully be used, subject to its record-retention obligations under other legislation.

73. MARKETING PHOTOGRAPHS

73.1 The Company may photograph, film and otherwise record the Stone Products and their setting before, during and after installation. The Customer grants the Company a perpetual, irrevocable, worldwide, royalty-free licence to reproduce, publish, display and otherwise use those images and recordings for the Company's marketing, promotional, portfolio, training, competition-entry and social media purposes.

73.2 The Company will not, without the Customer's prior written consent, publish the address of the Site, identify the Customer or occupier by name, or publish any image in which an identifiable individual appears.

73.3 The Customer may withdraw the licence in clause 73.1 in respect of future publication only, by written notice. The Company will remove the relevant images from material within its control within a reasonable time, but need not recall printed material already distributed, or remove images from third-party platforms or where removal is not technically practicable.

73.4 Where the Site is not owned or occupied by the Customer, the Customer must obtain the owner's and occupier's consent to the licence before the Company attends Site, and warrants that it has done so. Where any photograph contains personal information, the Company will comply with the Privacy Act and clause 72.

74. DISPUTE RESOLUTION AND MEDIATION

74.1 If a dispute arises out of or in connection with the Contract, a party must not commence Court proceedings (other than for urgent interlocutory or injunctive relief, or to recover an undisputed debt) unless it has complied with this clause.

74.2 The party raising the dispute must give written notice specifying the dispute, the relief sought and the basis of the claim. Within 10 Business Days, senior representatives of each party with authority to settle must meet, in person or by video conference, and negotiate in good faith.

74.3 **Mediation.** If the dispute is not resolved within 20 Business Days of that notice, either party may refer it to mediation. The mediator is to be agreed, failing which appointed by the Chair of the Resolution Institute (New Zealand) or its successor on the application of either party. The mediation is to be conducted in Auckland in accordance with the Resolution Institute's standard mediation agreement, confidentially and on a without prejudice basis, each party bearing its own costs and sharing the mediator's fees equally, and each attending with a representative having authority to settle.

74.4 If the dispute is not resolved within 20 Business Days of the mediator's appointment, or if either party declines to mediate, either party may commence proceedings under clause 76.

74.5 **Adjudication preserved.** Nothing in this clause limits or prevents either party from referring a dispute arising under a construction contract to adjudication under the CCA at any time. **Section 25 of the CCA applies notwithstanding this clause.**

74.6 Each party must continue to perform its obligations while a dispute is being resolved, save that the Company may exercise its rights under clause 14 and section 24A of the CCA in respect of non-payment. Nothing in this clause prevents the Company from recovering an amount that is not the subject of a bona fide dispute, or from enforcing a payment claim under the CCA.

75. NOTICES

75.1 A notice under the Contract must be in writing, in English, and given by hand delivery to the recipient's registered office or principal place of business, by post to its last known postal address, or by email to the address most recently notified in writing or used by that party in connection with the Contract.

75.2 A notice is deemed received: if delivered by hand, at the time of delivery; if posted, on the third Business Day after posting; if sent by email, at the time the email enters the recipient's information system in accordance with section 214 of the CCLA — provided that a notice deemed received after 5.00pm or on a day that is not a Business Day is deemed received at 9.00am on the next Business Day, and that an email notice is deemed not received if the sender receives an automated notification of non-delivery.

75.3 A notice from the Company may be signed by any director or by any employee authorised for that purpose. Notices to the Company must be sent to Art Stone Team Limited, [registered office], Auckland, and to sales@art-stone.co.nz, marked for the attention of the Director.

76. GOVERNING LAW AND JURISDICTION

76.1 The Contract is governed by and must be construed in accordance with the laws of New Zealand.

76.2 The parties submit to the **exclusive jurisdiction of the courts of New Zealand**, and the Company may commence proceedings in the District Court at Auckland or the High Court at Auckland as appropriate to the amount in dispute. The Customer must not commence or maintain proceedings in any other jurisdiction and waives any objection to venue or forum non conveniens in respect of proceedings brought in Auckland.

76.3 The United Nations Convention on Contracts for the International Sale of Goods, as given effect by the CCLA, does not apply to the Contract.

77. GENERAL

77.1 **Severability.** If any provision is or becomes illegal, invalid or unenforceable, in whole or in part, it is to be read down to the minimum extent necessary to make it legal, valid and enforceable; if it cannot be read down, it is severed to that extent; severance does not affect the remaining provisions; and the parties must negotiate in good faith to replace the severed provision with a valid provision having, so far as possible, the same commercial effect.

77.2 **Waiver.** No failure, delay or partial exercise of a right operates as a waiver of it. A waiver is effective only if in writing, signed by the party granting it, and only in the specific instance and for the specific purpose given. The Company's grant of time, forbearance from charging interest, acceptance of late payment, or continued supply notwithstanding default, does not waive any right.

77.3 **Assignment.** The Customer must not assign, novate, charge, subcontract or otherwise deal with its rights or obligations without the Company's prior written consent, which may be withheld in its discretion. The Company may

assign, novate or charge its rights, and may subcontract performance of any obligation, without the Customer's consent, provided it remains liable for the performance of any subcontracted obligation. The Company may assign any debt owing by the Customer to a factor, financier or debt-collection agency, and the Customer consents to the disclosure of information necessary for that purpose.

77.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior negotiations, representations, understandings and agreements, whether oral or written. Nothing in this clause limits liability for fraud, or any right that cannot be excluded under the CGA or the FTA (clauses 61 and 62).

77.5 **Electronic signatures.** The Contract, any Variation Form, Approval, Practical Completion Certificate and any notice may be signed electronically, and an electronic signature satisfies any legal requirement for a signature, in accordance with sections 222 to 228 of the CCLA. Each party consents to the use of electronic signatures and to the exchange and storage of documents in electronic form. An electronic signature includes a typed name, a scanned manuscript signature, a signature applied through a recognised e-signature platform, and a confirmation given by clicking an "accept" button in the Company's portal. This clause does not apply to a document required by law to be executed as a deed, sworn or witnessed, except to the extent permitted by law.

77.6 **Counterparts.** The Contract may be executed in counterparts, including counterparts transmitted by email, each of which is an original and all of which together constitute one instrument.

77.7 **No partnership or agency.** Nothing in the Contract creates a partnership, joint venture, agency or employment relationship, save as expressly stated in clause 42.4.

77.8 **Third parties.** Except as provided in clauses 65.4 and 67.1 (which are intended to confer benefits on the Company's directors, employees, agents and subcontractors and are enforceable by them under subpart 1 of Part 2 of the CCLA), no person other than a party may enforce any provision of the Contract.

77.9 **Miscellaneous.** Each party must promptly do all things and execute all documents reasonably required to give full effect to the Contract. The Company's rights are cumulative and in addition to any right or remedy at law or in equity. The Company may set off any amount owing by it to the Customer against any amount owing by the Customer to it on any account. Each party bears its own costs of entering into the Contract, except as provided in clause 13. The Contract is in English, and the English text prevails over any translation.

78. SURVIVAL

78.1 The following clauses survive termination, cancellation or expiry, together with any other clause which by its nature is intended to survive: clauses 1, 2, 7.2, 9, 10, 12, 13, 14.3, 17, 18, 19, 20, 21, 22.3, 46.5, 48, 49, 50, 51 to 60, 61, 62, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77 and this clause 78.

78.2 Termination does not affect any right, obligation or liability accrued before termination.

SCHEDULES

The following Schedules form part of, or are issued under, these Terms. They are unchanged from the full edition and are provided as separate documents.

SCHEDULE	DOCUMENT	REFERRED TO IN
1	Quote Conditions (one page)	clause 4
2	Trade Credit Application	clause 15.1
3	Deed of Personal Guarantee and Indemnity	clauses 16.3, 20
4	Workmanship Warranty	clause 49.2
5	Practical Completion Certificate	clause 47.1
6	Variation Form	clause 32.2
7	Defect Notification Form	clauses 48.2, 60.2
8	Stone Care Guide	clauses 38.1, 59.1