

Creative Stone Australia Pty Limited – Terms & Conditions of Trade – General

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1. Definitions

- 1.1 “Contractor” means Creative Stone Australia Pty Limited [**CSA**] its successors and assigns or any person acting on behalf of and with the authority of CSA.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between the Contractor and the Client in accordance with clause 4 below.
- 1.5 “Variations” means any works instructed by the Client to be performed by CSA, which did not form part of the initial Works. These Variation works will be additional to the Works and priced in addition to those originally quoted.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the Contractor’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.

3. Change in Control

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

4. Price and Payment

- 4.1 At the Contractor’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
 - (b) the Contractor’s Price at the date of delivery of the Works according to the Contractor’s current pricelist; or
 - (c) the Contractor’s quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor’s quotation in writing within thirty (30) days.
- 4.2 The Contractor reserves the right to change the Price:
- (a) if a Variation to the Materials which are to be supplied is requested; or
 - (b) if a Variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, building defects, safety considerations, discovery of asbestos, change of design, prerequisite work by any third party not being completed, poor

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weather conditions, limitations to accessing the site, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or

(d) in the event of increases to the Contractor in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of Variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Contractor's control.

4.3 At the Contractor's sole discretion a non-refundable deposit may be required. The deposit amount or percentage of the Price due will be stipulated at the time of the order of the Materials/Works and shall become immediately due and payable.

4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:

(a) on completion of the Works; or

(b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised Variations and the value of any Materials delivered to the site but not yet installed; or

(c) thirty (30) days following the date of the invoice which is posted to the Client's address or address for notices;

(d) the date specified on any invoice or other form as being the date for payment; or

(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and half percent (2.5%) of the Price), or by any other method as agreed to between the Client and the Contractor.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of the Works and material handling

5.1 Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.

5.2 The Client is responsible for all material handling of the Works, from the time it is delivered to the closest point of delivery of the Client and the Clients works.

5.3 CSA is not responsible for any lift or lift access to the site for the Clients works.

6. Building and Construction Industry Security of Payments Act 1999 NSW (Act)

6.1 All works related to the Price are any Variations in addition to the Price are made and are to be construed to be made in accordance with the above Act.