

- 1. Definitions**
- 1.1 "GC Smith" means T/A G.C. Smith & Co, its successors and assigns or any person acting on behalf of and with the authority of Zuvella Stone Pty Ltd T/A G.C. Smith & Co.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting GC Smith to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by GC Smith 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 (plus any GST where applicable) for the Works as agreed between GC Smith and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 2. Acceptance**
- 2.1 The 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 consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and GC Smith.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that GC Smith shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by GC Smith in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by GC Smith in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of GC Smith; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give GC Smith 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, change of trustees or business practice). The Client shall be liable for any loss incurred by GC Smith as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At GC Smith's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by GC Smith to the Client in respect of Works performed or Materials supplied; or
- (b) GC Smith's quoted Price (subject to clause 5.2) which shall be binding upon GC Smith provided that the Client shall accept GC Smith's quotation in writing within thirty (30) days.
- 5.2 GC Smith 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, limitations to site accessibility, pre-requisite work not completed by third parties, inaccurate measurements provided by the Client, change to fitting dimensions, etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to GC Smith in the cost of labour or Materials which are beyond GC Smith's control.
- 5.3 Variations will be charged for on the basis of GC Smith's quotation, and will be detailed in writing, and shown as variations on GC Smith's invoice. The Client shall be required to respond to any variation submitted by GC Smith within ten (10) working days. Failure to do so will entitle GC Smith to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At GC Smith's sole discretion a non-refundable deposit may be required.
- 5.5 Payment for the works by GC Smith are: 50% deposit on placement of an order & 50% on completion by GC Smith. Late fees may apply if account is not paid in due time.
- 5.6 Payment may be made by direct deposit or credit card.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by GC Smith nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 All prices stated by GC Smith include 10%.
- 6. Delivery of the Works**
- 6.1 Subject to clause 6.2 it is GC Smith's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that GC Smith claims an extension of time (by giving the Client notice) where completion is delayed by an event beyond GC Smith's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify GC Smith that the site is ready.
- 6.3 At GC Smith's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.4 GC Smith may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by GC Smith for delivery of the Works is an estimate only and GC Smith will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that GC Smith is unable to supply the Works as agreed solely due to any action or inaction of the Client, then GC Smith shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 7. Risk**
- 7.1 If GC Smith retains ownership of the Materials under clause 8 then:
- (a) where GC Smith is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
- (i) the Client or the Client's nominated carrier takes possession of the Materials at GC Smith's address; or
- (ii) the Materials are delivered by GC Smith or GC Smith's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); and
- (iii) at GC Smith's sole discretion the cost of delivery is either included in the Price or is in addition to the Price and will be stated.
- 7.2 Granite, marble and sandstone are natural stone products, they can have colour, shade, markings, and veining variations that may vary from samples viewed at GC Smith's premises
- 7.3 The Client acknowledges that Materials supplied may:
- (a) mark or stain if exposed to certain substances; and
- (b) be damaged or disfigured by impact or scratching.
- 7.4 GC Smith gives no guarantee (expressed or implied) against crazing, cracking, chipping fading or scratching to any materials supplied by GC Smith. Once materials have been supplied, delivered and installed by GC Smith any damage that occurs to any stone after delivery or installation will be at the clients cost to rectify or replace the products.
- 8. Title**
- 8.1 GC Smith and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid GC Smith all amounts owing to GC Smith; and
- (b) the Client has met all of its other obligations to GC Smith.
- 8.2 Receipt by GC Smith of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 8.1:
- 9. Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to GC Smith for Works – that have previously been supplied and that will be supplied in the future by GC Smith to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GC Smith may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, GC Smith for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of GC Smith;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of GC Smith;
- (e) immediately advise GC Smith of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 9.4 GC Smith and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by GC Smith, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client shall unconditionally ratify any actions taken by GC Smith under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10. Security and Charge**
- 10.1 In consideration of GC Smith agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies GC Smith from and against all GC Smith's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GC Smith's rights under this clause.
- 10.3 The Client irrevocably appoints GC Smith and each director of GC Smith as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf. **Defects, Warranties and Guarantees**
- 11.1 GC Smith acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.2 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, GC Smith makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. GC Smith's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.3 If the Client is a consumer within the meaning of the CCA, GC Smith's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.4 Materials which have been provided to the Client which were not defective.
- 11.5 If the Client is not a consumer within the meaning of the CCA, GC Smith's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by GC Smith at GC Smith's sole discretion;
- (b) limited to any warranty to which GC Smith is entitled, if GC Smith did not manufacture the Materials;
- (c) otherwise negated absolutely.
- 11.7 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11; and
- (b) GC Smith has agreed that the Materials are defective; and
- 11.8 Notwithstanding clauses **Error Reference source not found.** to 11.7 but subject to the CCA, GC Smith shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain any Materials;
- (b) the Client using the Materials for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Works by the Client or any third party without GC Smith's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by GC Smith;
- (f) fair wear and tear, any accident, or act of God.
- 11.9 Notwithstanding anything contained in this clause if GC Smith is required by a law to accept a return then GC Smith will only accept a return on the conditions imposed by that law.
- 12. Intellectual Property**
- 12.1 Where GC Smith has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in GC Smith, and shall only be used by the Client at GC Smith's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of GC Smith.
- 12.2 The Client agrees that GC Smith may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which GC Smith has created for the Client.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at GC Smith's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes GC Smith any money the Client shall indemnify GC Smith from and against all costs and disbursements incurred by GC Smith in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GC Smith's contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies GC Smith may have under this contract, if a Client has made payment to GC Smith, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by GC Smith under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 13.4 Without prejudice to GC Smith's other remedies at law GC Smith shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GC Smith shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to GC Smith becomes overdue, or in GC Smith's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by GC Smith;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 14. Cancellation**

- 14.1 Without prejudice to any other remedies GC Smith may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GC Smith may suspend or terminate the supply of Works to the Client. GC Smith will not be liable to the Client for any loss or damage the Client suffers because GC Smith has exercised its rights under this clause.
- 14.2 GC Smith may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice GC Smith shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to GC Smith for Works already performed. GC Smith shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by GC Smith as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 15. Privacy Act 1988**
- 15.1 The Client agrees for GC Smith to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by GC Smith.
- 15.2 The Client agrees that GC Smith may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 15.3 The Client consents to GC Smith being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Client agrees that personal credit information provided may be used and retained by GC Smith for the following purposes (and for other agreed purposes or required by):
- the provision of Works; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Works.
- 15.5 GC Smith may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.6 The information given to the CRB may include:
- personal information as outlined in 15.1 above;
 - name of the credit provider and that GC Smith is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults, overdue accounts, or outstanding monies which are overdue by more than thirty (30) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and GC Smith has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of GC Smith, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Client shall have the right to request (by e-mail) from GC Smith:
- a copy of the information about the Client retained by GC Smith and the right to request that GC Smith correct any incorrect information; and
 - that GC Smith does not disclose any personal information about the Client for the purpose of direct marketing.
- 15.8 GC Smith will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Client can make a privacy complaint by contacting GC Smith via e-mail. GC Smith will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. Dispute Resolution**
- 16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 17. Service of Notices**
- 17.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - if sent by email to the other party's last known email address.
- 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 18. Trusts**
- 18.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not GC Smith may have notice of the Trust, the Client covenants with GC Smith as follows:
- the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - the Client will not without consent in writing of GC Smith (GC Smith will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - the removal, replacement or retirement of the Client as trustee of the Trust;
 - any alteration to or variation of the terms of the Trust;
 - any advancement or distribution of capital of the Trust; or
 - any resettlement of the trust property.
- 19. General**
- 19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia the state in which GC Smith has its principal place of business, and are subject to the jurisdiction of the courts of Western Australia.
- 19.3 Subject to clause 11, GC Smith shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by GC Smith of these terms and conditions (alternatively GC Smith's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 19.4 GC Smith may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 19.5 The Client cannot licence or assign without the written approval of GC Smith.
- 19.6 GC Smith may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of GC Smith's sub-contractors without the authority of GC Smith.
- 19.7 The Client agrees that GC Smith may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for GC Smith to provide Works to the Client.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.