

Terms & Conditions of Trade

1. Definitions

1.1 “Contractor” and/or “Supplier” means “Karingal Pty Ltd T/A The Marble Man” (ABN: 76 010 914 824), and The Marble Man (NSW) Pty Ltd (ABN: 77120 644 724), its successors and assigns or any person acting on behalf of and with the authority of The Marble Man (where the context so permits the terms ‘The Marble Man’, ‘Supplier’, ‘Contractor’ shall be interchangeable for the other).

1.2 “Customer” means “Client” or “Buyer” 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. (‘Customer’, ‘Buyer’ and ‘Client’ where the context so permits shall be interchangeable for the other).

1.3 “Works” means all Goods, Services, Materials provided by Supplier to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’, ‘Goods’, ‘Services’ or ‘Materials’ shall be interchangeable for the other).

1.4 “Price” means the Price payable for the Works as agreed between Supplier and the Customer in accordance with clause 3. below.

1.5 “Tiles” means all surfaces to be treated by The Marble Man.

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Services or Goods.

2.2 These terms and conditions may only be amended with the Supplier’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and the Customer.

3. Price and Payment

3.1 The Price shall be as indicated on invoices provided by Supplier to the Customer in respect of the Works, Services and/or Goods provided.

3.2 Time for payment for the Works shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due in seven (7) days following the date of the invoice.

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

4. Provision of the Works

4.1 Any time specified by Customer for provision of the Works is an estimate only and Supplier will not be liable for any loss or damage incurred by the Customer as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that Supplier is unable to provide the Works as agreed solely due to any action or inaction of the Customer then Supplier shall be entitled to charge a reasonable fee for reproviding the Works at a later time and date.

4.2 Client/s responsibility for all pets to be secured, personal items, furniture, computers, all items of value at risk of damage must be removed, covered or protected by the Client/s. Including building equipment and materials.

4.3 No persons on the site for the duration of the process for the Works to be completed and the period as advised after the treatment of the tiles.

4.4 The Contractor shall not be liable for defective tiles or other surfaces.

4.5 The history and quality of the surface condition can cause some stains to remain and are not the liability of the Contractor.

4.6 All risk for the Works shall immediately pass to the Customer upon provision thereof.

5. Title

5.1 Supplier and the Customer agree that the Customer's obligations to Supplier for the provision the Works shall not cease (and ownership of the Materials shall not pass) until:

(a) the Customer has paid Supplier all amounts owing to Supplier; and

(b) the Customer has met all other obligations due by the Customer to Supplier in respect of all contracts between Supplier and the Customer.

5.2 Receipt by Supplier 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 and until then Supplier's ownership or rights in respect of this agreement (and the Materials) shall continue.

5.3 It is further agreed that:

(a) until ownership of the Materials passes to the Customer in accordance with clause 4.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Supplier on request.

(b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Supplier and must pay to Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed. The production of these terms and conditions by Supplier shall be sufficient evidence of Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Supplier to make further enquiries.

(c) unless the Materials have become fixtures the Customer irrevocably authorises Supplier to enter any premises where Supplier believes the Materials are kept and recover possession of the Materials.

(d) Supplier may commence proceedings to recover the Price notwithstanding that ownership of the Materials has not passed to the Customer.

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

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

6.2 Upon assenting to these terms and conditions in writing the Customer agrees to be Grantor of Security Interest by the PPSA to the Supplier. The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and collateral (accounts) – being a monetary obligation of the Customer to Supplier for Works – that have previously been provided, and that will be provided in the future, by Supplier to the Customer.

6.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Supplier 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 5.3(a)(i) or 5.3(a)(ii); indemnify, and upon demand reimburse, Supplier 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 registration made thereby;

(b) not register a financing change statement in respect of a security interest without the prior written consent of Supplier;

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of Supplier.

6.4 Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

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

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

6.7 Unless otherwise agreed to in writing by Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

6.8 The Customer shall unconditionally ratify any actions taken by Supplier under clauses 6.3 to 6.5.

6.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

7. Security and Charge

7.1 In consideration of Supplier agreeing to provide the Works, 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

7.3 The Customer irrevocably appoints Supplier and each director of Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 6 including, but not limited to, signing any document on the Customer's behalf.

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

8.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

8.2 Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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

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

8.5 If Supplier is required to rectify, re-provide, or pay the cost of re-providing the Works under this clause or the CCA, but is unable to do so, then Supplier may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works which have been provided to the Customer which were not defective.

8.6 If the Customer is not a consumer within the meaning of the CCA, Supplier's liability for any defect or damage in the Works is:

(a) limited to the value of any express warranty or warranty card provided to the Customer by Supplier at Supplier's sole discretion;

(b) limited to any warranty to which Supplier is entitled, if Supplier did not manufacture the Materials;

(c) otherwise negated absolutely.

9. Default and Consequences of Default

9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of three percent (3%) per calendar month (and at Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

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

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

(a) any money payable to Supplier becomes overdue, or in Supplier's opinion the Customer will be unable to make a payment when it falls due;

(b) the Customer 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

10. Privacy Act 1988

10.1 The Customer agrees for Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Supplier.

10.2 The Customer agrees that Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Customer; and/or

(b) to notify other credit providers of a default by the Customer; and/or

(c) to exchange information with other credit providers as to the status of this

credit account, where the Customer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Customer. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

10.3 The Customer consents to Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

10.4 The Customer agrees that personal credit information provided may be used and retained by Supplier for the following purposes (and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time):

- (a) the provision of Works; and/or
- (b) the marketing of Works by Supplier, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Works.

10.5 Supplier may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

10.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that Supplier is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of Supplier, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by Supplier has been paid or otherwise discharged.

11. Limitation of Liability

11.1 Supplier shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by Supplier of these terms and conditions.

11.2 In the event of any breach of this contract by Supplier the remedies of the Customer shall be limited to damages and Supplier's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, Materials, Services, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.

12. General

12.1 The failure by Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Supplier'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.

12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Supplier has its principal place of business, and are subject to the jurisdiction of the Courts in that state.

12.3 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

12.4 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

12.5 The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide Goods/Works to the Customer.

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

12.7 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.