

## STONE INTERIORS

### Terms of Trade

#### 1 Definitions

- 1.1 'The Company' means Stone Interiors Ltd
- 1.2 'The Customer' means the customer named on the Company's acknowledgement of order
- 1.3 'The Contract' means the contract for the sale of goods and/or the supply of services by the Company to the Customer
- 1.4 The 'Goods' mean any goods forming the subject of this contract including parts and components or materials incorporated into them
- 1.5 'The Services' means the services that the Company has agreed to provide
- 1.6 The 'Company's Conditions' means these standard terms and conditions together with any other conditions referred to in the Company's estimate or acknowledgement of order. If any of the conditions conflict, then specific conditions in the estimate or acknowledgement of order take precedence over these standard conditions.

#### 2 Estimate Validity and Existence of Contract

- 2.1 Estimate or tenders given in writing by the Company (verbal communications do not constitute an estimate or tender) shall unless otherwise stated be open for acceptance for 30 days from the date thereof, after which the Company reserves the right to modify the estimate or tender. The Company may withdraw its estimate or tender at any time prior to written acknowledgement of order.
- 2.2 Any acceptance of the estimate or tender by the Customer whether written or verbal will be subject to the Company's written acknowledgement. It is the Customer's responsibility to notify the Company of any discrepancies in the acknowledgement, in writing within 7 days of receipt. The Company will not be liable for any losses due to discrepancy in the acknowledgement should the Customer fail to notify the Company.
- 2.3 No contract shall exist until
  - a) The Company issues a written acknowledgement of order
  - b) The Company has received the required deposit, or
  - c) The Company has satisfactory credit insurance for the Customer
- 2.4 If the Company's Conditions are at variance or inconsistent with any provision or condition (whether special or general) contained or referred to in the Customer's enquiry or subsequent order, then the Company's Conditions as described here shall prevail and be effective. JCT or other subcontract conditions do not apply.
- 2.5 Variations and amendments to the contract, or any terms thereof, shall not be binding or valid unless agreed and confirmed by the Company in writing, save as may be provided in the Company's conditions.
- 2.6 No order that has been acknowledged in writing by the Company may be cancelled by the Customer except with the written agreement of the Company and on the terms that the Customer shall indemnify the Company in full against all loss, including but not limited to costs, charges and expenses incurred by the Company as a result of the cancellation.

#### 3 Cancellations

- 3.1 The Customer will in the event of agreed cancellation indemnify the Company fully as per condition 2.6.

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- 3.2 The Company may, without prejudice to its other rights in law, suspend or cancel further manufacture, deliveries or services under this or any other contract between the parties hereto and debit the Customer with any losses incurred if
- a) The Customer shall fail to make payment in full of any sum owing by the date due
  - b) The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation or an encumbrance takes possession or a receiver or administrative receiver is appointed.
  - c) The Customer ceases or threatens to cease to carry on business.
  - d) The Customer has any distress or execution levied on its goods.
  - e) The Company reasonably apprehends that any of the events mentioned in (b) to (d) above is about to occur in relation to the Customer and notifies the Customer in writing accordingly.
  - f) The value of goods delivered but not paid for exceeds or if delivered would exceed the Customer's credit limit with the Company.
- 3.3 If the Customer refuses, is unable to, or fails to take delivery of goods or services by the date specified in the Contract or by any date for delivery subsequently advised in writing by the Company a minimum of one week prior to the actual delivery date, or where no date is specified, within a reasonable period, the Company may, without prejudice to its other rights, submit an invoice for payment as though the goods or services had been delivered or carried out. The invoice to include storage charges if appropriate. The Company may, having given written notice of its intention to do so, sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses), account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## 4 Prices and Fluctuations

- 4.1 The rates and prices in the estimate/tender are based on and are subject to acceptance by the Customer of the entire estimate/tender.
- 4.2 Errors and omissions excepted.
- 4.3 The Company's rates and prices are based on the specification, quantities and programme provided at the date of estimate/tender, as qualified by these Conditions and the estimate/tender. The Customer will be invoiced for the actual quantities, design details and programme required by the Customer. In the event of significant variation to either specification, quantities, details or programme the Company reserves the right to amend the rates accordingly, which need not necessarily be on a pro rata basis, but may at the Company's discretion.
- 4.4 The Customer shall be liable in full for all loss (including but not limited to loss of profit), costs, abortive costs, charges and expenses incurred by the Company as a result of the Customer's failure to comply with these Conditions and in particular, but not limited to, failure to provide manufacture details in good time and variations to works which have already been scheduled/manufactured.

## 5 Terms of payment

- 5.1 A deposit of 50% is payable on acknowledgement of order and where agreed interim payments will be due based on valuations. Outstanding balance is invoiced on completion. Where agreed lead time commences from receipt of deposit.
- 5.2 Invoiced goods or services are payable not more than 30 days after the date of the invoice.

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- 5.3 Without prejudice to any other rights of the Company if the customer fails to pay the invoice by the due date the customer shall forfeit any discount on that invoice. Furthermore the customer shall pay interest on any overdue amount from the date at which payment is due to the date at which it is received at a rate of 5% per annum above the Bank of England base rate as quoted at the payment date. The Customer shall reimburse the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.
- 5.4 Where the Customer fails to pay the invoice by the due date, all deliveries will be suspended on this and all other Contracts with the Company, until the invoice and any additional costs incurred under clause 5.3 have been paid. The Company reserves the right, after such a failure, to cancel the Customer's credit facility, at any time during the contract. The contract will henceforth operate on a cash account basis, whereby payment will be required based on pro forma invoices prior to manufacture and/or despatch of goods, at the Company's discretion. The Customer's credit facility can be reinstated at any time at the Company's discretion.
- 5.5 If the Customer's status changes, as defined in Condition 3.2(b) to (e) the price of all Goods and Services for the contract less all cleared payments already received, including the full price of all part scheduled or part manufactured Goods and all finished Goods whether or not delivered, shall become due immediately, and payable notwithstanding any agreement to the contrary.

### 6 Delivery

- 6.1 Any offloading period in excess of 2 hours, will at the Company's discretion, be subject to an additional charge.
- 6.2 Unless otherwise agreed delivery is to roadside only.

### 7 Performance and liability

- 7.1 The Company shall not be liable for any penalty, loss, consequential loss, liquidated damages, injury, damage or expense arising from any failure in delivery or performance arising from circumstances outside the Company's control, including but not limited to force majeure, war or hostilities, government legislation order or direction, strike lock out or labour disturbance, civil commotion, fire, accident, shortage of materials (those of the Company or its supplier's), geology of the stone, power failure, breakdown of machinery, police or local authority restrictions, delays in issue, approval or clearance of working drawings, stone schedules, templates or other relevant information, lack of instruction from the Customer or suspension of the Customer's credit facility and any other cause outside the Company's control.
- 7.2 Any claim that goods have been delivered damaged, collected by the Customer in a damaged condition, are not of the correct quantity or do not comply with their description, shall be notified by the Customer to the Company within 72 hours of delivery or collection.
- 7.3 Any alleged defect shall be notified by the Customer to the Company within 72 hours of delivery, or in the case of any defect which is not reasonably apparent on inspection, within 72 hours of the defect coming to the Customer's attention.
- 7.4 No claim against the Company shall be allowed for any defect arising from any design or specification provided or made by the Customer or if any adjustments alterations or other work has been undertaken on the goods by any person other than the Company.

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- 7.5 Any claim under this condition must be in writing, accompanied by photographs, fully quantified and contain reference numbers any other details to support the claim including details of any alleged defects.
- 7.6 The Company shall be afforded reasonable opportunity and facilities to investigate any claim made under this condition.
- 7.7 In the case of goods which the Company agrees are defective, the Company shall be allowed a reasonable time to rectify any defect or supply replacement goods, whichever the Company deems appropriate, at the Company's expense.
- 7.8 If the Company agrees that recompense is due to the Customer for defects in accordance with this condition, a credit note will be issued against the relevant invoice. The Customer shall not make set offs against payments due on this or any other order/contract with the Company. The Company's recompense shall not exceed the invoiced price of the particular defective Goods.
- 7.9 Where the Company is liable under this condition in respect of part of the goods, then the contract shall remain in full force and effect in respect of the other part or parts of the goods and no set off or other claim shall be made by the Customer against or in respect of such other part or parts of the goods.
- 7.10 All other liabilities including, but not limited to, consequential loss, carriage or loss of profit are expressly excluded from any claim against the Company.
- 7.11 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the provisions of this or any other condition herein.
- 7.12 Fit for purpose (stone choice) – Confirmation of a material is deemed to be acceptance of its performance in its chosen environment. Certain materials such as marble/limestone will not be durable in an environment where oily, coloured and acidic liquids are used (i.e. kitchen, swimming pools). Please query this with us if you are unsure.

### **8 Risk and retention of title**

- 8.1 Risk in goods shall pass to the Customer when the goods are delivered or collected by the Customer or its agent.
- 8.2 Notwithstanding the earlier passing of risk to the Customer, property and ownership of any Goods supplied will remain the property of the Company and title in the goods shall not pass to the Customer until any amounts due are paid and received in full.
- 8.3 Until the title passes the Customer shall hold the Goods as bailee for the Company, shall insure the Goods against all reasonably insurable perils and shall store and mark the Goods so that they can at all times be identified as property of the Company.
- 8.4 If the Customer fails to comply with the payment conditions, the Company shall be entitled at any time, until the property of the Goods passes to the Customer, to require the Customer to deliver up the Goods to the Company, and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

### **9 Specification**

- 9.1 All goods are supplied on the clear understanding that natural stone materials and finished masonry products will be subject to natural formation characteristics, variation in colour, markings, texture, grain, bed and moisture content.

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- 9.2 The Company reserves the right to supply a similar alternative where, for reasons outside its control, it is unable to supply the stone originally specified.
- 9.3 Any samples supplied are merely indicative of the type of the material, and will not necessarily show the variation in colour, marking etc over larger areas of stonework.
- 9.4 Unless specifically provided for in the estimate/tender, no drawings or design work has been, or will be provided by the Company and as such the Company accepts no design liability.
- 9.5 Any specifications, literature or particulars supplied by the Company are submitted in confidence and for use and information of the Customer only, and any copyright therein shall remain the property of the Company.
- 9.6 The Company shall have no responsibility for the design of the Goods unless specifically agreed in writing, the Company shall not be responsible for the suitability or fitness of purpose of the Goods supplied.

### **10 Law and construction**

- 10.1 The Contract shall be governed by English Law and the Customer consents to the exclusive jurisdiction of the English Court in all matters regarding the Contract except to the extent the Company invokes the jurisdiction of the Court of any other country.
- 10.2 The headings and conditions are for convenience of reference only and shall not affect their interpretation.
- 10.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other condition.
- 10.4 The parties agree that if any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 10.5 This estimate/tender constitutes an invitation to treat and is not an offer.