

GENERAL TERMS AND CONDITIONS OF SALE

1) DEFINITIONS

The following words shall have where the context so permits the following meanings:

“Sales Order / Order Confirmation” means the agreement between the Supplier and the Purchaser incorporating the quotation, the General Terms and Conditions of Sale, and all documents applicable thereto;

“Date of Delivery” means the date upon which the Goods are despatched from the Supplier’s premises to the Delivery Point;

“Delivery Point” means the address nominated by the Purchaser as the place for delivery of Goods mentioned in the Sales Order;

“Goods” means all materials, supplies, plant, equipment, machinery, stores, services and the like to be provided by the Supplier under this Agreement;

“Date of Cancellation” means the date upon which the Supplier receives the notice of cancellation from the Purchaser;

“Purchaser” means the person, firm or corporation to whom the Sales Order is issued;

“Stipulated Period” means the period of time specified on the Sales Order or Quotation as the period for which the prices shall apply;

“Supplier” means Urbanstone Central A.B.N. 86 126 374 785.

“GST” means any goods and services tax including the tax imposed under A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended and any regulations thereto or any such other Act and regulations of similar effect;

“Third Party” means any person, company or otherwise not being the Purchaser or the Supplier;

2) QUOTATIONS

Quoted prices will remain valid for a period of 30 days from quotation date unless otherwise stated.

After the 30 day Period, the quoted prices are subject to alteration without notice to the Purchaser.

A quotation is not binding on the Supplier and may be withdrawn without notice until accepted by the Supplier in writing.

Unless otherwise expressly stated, prices quoted are for delivery free on road vehicle or free on truck in the Supplier’s works plus GST.

Any reduction to the original quantity quoted on, may result in an increase to the quoted unit price.

3) ENTIRE AGREEMENT

The Sales Order is the only document which will be recognised by the Supplier as authority for undertaking to supply the Goods. The Sales Order constitutes the entire agreement between the parties and supersedes all previous negotiations and communications.

The Supplier reserves the right to decline, by written notice to the Purchaser, to fulfil any Sales Order in whole or in part, at any time prior to the delivery of the Goods or performance of the services, in which case the Supplier will be under no obligation in respect of the Sales Order.

The Sales Order may only be varied by written agreement between the parties.

4) CANCELLATION

The Purchaser may, prior to commencement of the manufacture or delivery of the Goods the subject of the Sales Order, by notice in writing to the Supplier, cancel part or the entire Sales Order.

In the event of cancellation the Purchaser shall be required to pay to the Supplier its actual out-of-pocket expenses and any reasonable expenses incurred by the Supplier prior to the Date of Cancellation. Product manufactured prior to cancellation will need to be paid by the Purchaser if manufactured for a specific order.

5) PRICE

All prices in the Sales Order are expressed in Australian Dollars and shall be determined by the Supplier as follows:-

(a) Pursuant to quoted price payable per item or square metre rate or per Company’s price list plus GST if the price is not GST inclusive.

(b) The Purchaser is liable for the amount of any GST payable in respect of the taxable supply. All Customs Duty, freight and other charges shall be paid by the Purchaser.

6) TERMS OF PAYMENT

Unless otherwise agreed the Goods under the Sales Order must be paid for in full prior to the Delivery Date. Tax Invoices are issued on date product is despatched.

On all 30 day credit accounts:

(a) The Supplier shall invoice the Purchaser for payment for each delivery made or for goods not ready for delivery but stored at the Supplier’s premises.

(b) Payment to the Supplier must not be subject to the Purchaser receiving payment for the Goods supplied. No cash retentions are to be deducted from any payment made to the Supplier. Payments made by credit cards will attract a 1.5% minimum fee.

(c) Payment is required to be made by the Purchaser by the 30th day from the end of the month the goods are invoiced. The Supplier reserves the right to charge interest at the rate of ONE (1) per centum above the business overdraft reference rate charged by the Challenge Bank on amounts over \$100,000. The Purchaser acknowledges that this interest rate is to be characterised as a charge consequent upon the Purchaser’s default and not a charge referable to the provision of credit.

(d) Liquidated damages provisions do not apply unless agreed upon in writing by both the Supplier and the Purchaser prior to placement of order. The Supplier reserves the right on all credit accounts to vary the terms of the payment at any time should the credit worthiness of the Purchaser at any time become, in the Supplier’s opinion, unsatisfactory and will require payment to be made in cash in full or by bank cheque.

7) DEFAULT IN PAYMENT

(a) The Supplier will treat any default by the Purchaser in payment of any monies due as a breach of the terms and conditions of the Sales Order. The Supplier will then cease work on the relevant Sales Order and all other Sales Orders placed by the Purchaser and hold all the Purchaser’s work until the due payment or payments are made. Recurring payment default will lead to the Purchaser’s account with the Supplier being closed and any further Sales Order placed by the Purchaser will only be processed when pre-paid for by bank cheque. Delivery will cease without notice to the Purchaser should payment of the account become overdue.

(b) In the event of any amount due by the Purchaser to the Supplier being paid by a cheque of a Third Party or a Third Party arranging for the amount due being paid by credit card or other electronic funds transfer (“a Third Party Payment”) and such cheque being dishonoured or such credit card or other payment being cancelled, withdrawn or being charged back to the Card Issuer then the Purchaser shall be and shall remain liable to pay such amount to the Supplier.

(c) In the event of any refund being due by the Supplier to the Purchaser or to a Third Party (as a consequence of an overpayment of a third Party Payment) and the initial payment to the Supplier being made by credit card, then the Supplier shall credit such refund or overpayment to the Credit Card Issuer and not the Purchaser or Third Party (as the case may be) PROVIDED THAT any refund of the whole or part of any Third Party Payment shall not be made without the written consent of the Purchaser.

8) COMPLETION OF GOODS

If the Goods are manufactured and completed by the Supplier and the Purchaser has over ordered or does not require the goods or is not ready to take delivery of Goods, then the Purchaser is required to pay for the Goods in full and for all costs incurred in or about the storage of the Goods.

9) WARRANTY

The Supplier acknowledges that there are certain conditions and warranties implied at law or by statute in the Sales Order which cannot be excluded, restricted or modified by agreement (“non-excludable rights”).

Subject to the above, the Supplier disclaims and expressly excludes all conditions and warranties expressed or implied, and all rights and remedies conferred on the Purchaser by any statute, law, equity, trade, custom or usage otherwise howsoever other than non-excludable rights.

Where so permitted the liability of the Supplier for a breach of a non-excludable rights is limited, at the Supplier’s option, to replacement of the Goods or the refund of the price paid by the Purchaser.

Deterioration of the product caused by improper installation method or by the application of chemicals such as sealants, acids, salt solutions and other external elements are expressly excluded from this warranty. Recommended installation method is available on request or on our website www.urbanstonecentral.com.au

10) VARIATIONS IN COLOUR, TEXTURE & FINISH

Every reasonable endeavour is made by the Supplier to match colour, texture and finish to samples of the Goods ordered, however, variations may occur. The Supplier does not accept any claim for liability relating to any variations of the Goods as colour and shade variations are an inherent part of the manufactured product.

11) DELIVERY

All goods shall be delivered by the Supplier to the Delivery Point and if the Supplier, or its servant or agents, obtain from any person at the Delivery Point a receipt or signed delivery docket for the Goods, then the Supplier shall be conclusively presumed to have delivered the Goods in accordance with the Sales Order. If the Delivery Point shall be unattended or if delivery cannot otherwise be effected by the Supplier, the Supplier may, at its option, leave the Goods at the Delivery Point or store the Goods at the Supplier’s discretion. If the Goods are stored by the Supplier, the Purchaser shall pay or indemnify the Supplier for all costs and expenses incurred in or about the storage and the Supplier shall be at liberty to re-deliver them to the Purchaser from the place of storage at the Purchaser’s expense.

It is the Purchaser’s responsibility to ensure that the unloading site is easily accessible, if the unloading site is not easily accessible and extra costs are incurred by the Supplier in unloading the Goods then the extra costs will be charged to the Purchaser.

12) TIME OF DELIVERY

Any time quoted for delivery is an estimate only and the Supplier shall not be liable for any loss or damage howsoever arising as a result of or consequence or any failure to deliver or delay in delivery arising from any circumstances whatsoever UNLESS the failure or delay in delivery of the Goods is due to the Supplier’s negligence or wilful default and the Purchaser notifies the Supplier in writing of such loss or damage within TWO (2) days from the Date of Delivery.

The Purchaser shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

If the Supplier determines that it is or may be unable to deliver within a reasonable time or at all the Sales Order may be cancelled by the Supplier. In the event of cancellation, the Purchaser shall not have any claim against the Supplier for any damage, loss, cost or expense whatsoever.

It is the responsibility of the Purchaser to ensure delivery is not affected by lack of credit facility with the Supplier.

13) SHORT OR WRONGFUL DELIVERY

The Purchaser must notify the Supplier in writing within TWO (2) days after delivery of the Goods of any short or wrongful delivery of the Goods and any claim not so notified within the time aforesaid shall be deemed to be absolutely waived.

14) EXAMINATION OF GOODS

The Purchaser will be responsible for immediate examination of the Goods at the Supplier’s premises and at the Delivery Point and the Supplier shall, expect as may otherwise be provided by law, not to be liable for any claim to which it would otherwise be liable in respect of damaged goods UNLESS particulars of such claims are notified to the Supplier in writing within TWO (2) days after arrival at the Delivery Point.

The Goods in question should be set aside for inspection by a nominated representative of the Supplier.

15) SUB CONTRACTORS

The Supplier takes no responsibility for the workmanship or the quality of work performed by sub contractors engaged by the Purchaser whether recommended by the Supplier or not.

16) RISK

All goods being delivered shall be at the Purchaser’s risk. The Supplier will not be liable for any damage or loss whatsoever arising out of or in connection with the carriage of goods unless the damage or loss is a result of the Supplier’s negligence or wilful default.

- 17) **TITLE**
(a) Legal and beneficial ownership in and to the Goods shall remain with the Supplier until the Purchaser has paid in full all amounts owing on all accounts to the Supplier.
(b) Until the Goods are paid for in full, the relationship between the parties shall be fiduciary, the Purchaser shall hold the Goods as bailee of the Goods, the Purchaser is required to store the Goods separately and mark them so as to be identified as being or being made from or with any Goods which are the property of the Supplier.
(c) Should the Goods (or any part of them) be incorporated into a new product or products ("new product") the incorporation of Goods, in whatever proportions, shall be deemed to have been effected on behalf of the Supplier and the new product shall be the property of the Supplier. The right of the Purchaser to incorporate the Goods in a new product shall automatically cease if a receiver or a manager is appointed over any of the Purchaser's assets or if a winding up order is made against or resolution is passed for the winding up of the Purchaser or the Purchaser is placed under official management or administration the Purchaser becomes insolvent or bankrupt or commits an act of bankruptcy or the Purchaser assigns the Goods or any part of the Goods for the benefit of a creditor or if the Supplier at any time revokes such rights by notice to the Purchaser.
(d) The Purchaser shall have no right to sell or otherwise dispose of the Goods or the new product until the purchase price has been paid in full to the Company unless:
(i) the Goods or the new product are sold in the ordinary course of the Purchaser's business; and
(ii) the parts of the proceeds of sale of the Goods and the new product as represents the price of the Goods shall be paid forthwith to the Supplier and until such part of the proceeds are so paid, they shall be held by the Purchaser in trust for the Supplier.
(e) The power of sale conferred on the Purchaser shall automatically cease if a receiver or receiver and manager is appointed over any of the Purchaser's assets or if a winding up order is made against or resolution is passed for the winding up of the Purchaser or the Purchaser is placed under official management or administration the Purchaser becomes insolvent or bankrupt or commits an act of bankruptcy or the Purchaser assigns the Goods or any part of the Goods for the benefit of a creditor or if the Supplier at any time revokes the power of sale by notice to the Purchaser.
(f) On determination of the Purchaser's power of sale under (d) above the Supplier shall become entitled to the possession of the Goods and the new product. The Purchaser is required to place the Goods and the new product at the disposal of the Supplier who shall be entitled to enter upon the premises of the Purchaser and remove the Goods and new product.
(g) If any provision of this clause creates or constitutes a charge or other security right requiring registration, then the provision shall be deemed to be served from this clause.
(h) The Supplier reserves the right to waive this clause and seek payment in full for product which is manufactured to order.
- 18) **PALLETS**
Pallets are supplied free of charge and are returnable in Western Australia only.
- 19) **ADVICE**
Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods, including use and application of the Goods is given in good faith. No liability or responsibility is accepted by the Supplier for any damage, loss (direct or indirect) or any consequential loss suffered by the Purchaser as a result of reliance upon the advice, recommendation, information, assistance or service for delivery to the Purchaser.
- 20) **INDIRECT LOSS**
Notwithstanding any other provision of this Sales Order to the contrary, the Supplier shall not be liable for any loss or damage to the Purchaser arising from or caused or contributed by the negligence of the Supplier, its servants or agents, nor shall the Supplier be liable for special, incidental, indirect or consequential loss or damage suffered by the Purchaser as the result of a breach by the Supplier of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue costs arising from such breach.
- 21) **WAIVER**
A waiver by the Supplier of the breach of any provision of the Sales Order shall not constitute a waiver of any other breach of such provision or any other provisions.
- 22) **INSTALMENTS**
The Supplier reserves the right to deliver by instalments. Failure of the Supplier to deliver any instalments shall not entitle the Purchaser to cancel the balance of the Sales Order. In the event of the Purchaser making default in respect of any instalment, the Supplier may elect to treat the default as a breach of contract relating to each other instalment.
- 23) **RETURNS**
No returns will be accepted for any Goods which are classified as reject or discontinued lines or without the prior approval from the Supplier, Credit for Goods returned will be subject to cartage costs plus a reduction of 20% of the invoice value to cover handling and restocking expenses. No returns will be accepted on opened pallets or on any item especially obtained, imported, made to order or especially packaged with mixed products.
- 24) **INSPECTION**
Any inspection or test agreed upon prior to the acceptance of the Goods by the Purchaser, must unless otherwise agreed, be carried out by the Purchaser or its designated agent at the Supplier's works.
If any specialised inspection is required or special test prescribed by the Purchaser, the cost shall be to the Purchaser's account. In the case of such inspection, the Suppliers accepts no responsibility for any defects in the Goods which are identified once the Goods in question have left the Supplier's site.
- 25) **SUB-CONTRACTING**
The Supplier reserves the right to sub contract the production or supply of the whole or any part of the Goods or of any materials or services to be supplied.
- 26) **LAWS, REGULATIONS, PERMITS ETC.**
The Purchaser shall obtain all permits, licences and give all notices required to be given and shall pay all fees, deposits and taxes required to be paid under all rules (Federal, State or Municipal) in any way affecting or applicable to the manufacture and/or supply of the goods.
- 27) **SEVERANCE**
If any provision of the Sales Order shall be determined to be void by any court of competent jurisdiction, then such a determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.
- 28) **FORCE MAJEURE**
If the Supplier is rendered unable, wholly or in part, by force majeure or carry out its obligation under the Sales Order, then the Supplier shall give to the Purchaser written notice of the force majeure with reasonably full particulars thereof whereupon:
(a) the obligations of the Supplier so far as it is affected by the force majeure shall be suspended during not longer than the continuance of the force majeure; and
(b) and period or periods of time referred to in the Purchase Order within which a particular obligation or responsibility or duty is to be performed shall be extended by a period of time equal to that during which the force majeure continues.
The Supplier shall use reasonable diligence to remedy the force majeure.
The term "force majeure" as employed in this Sales Order shall mean any cause which is not within the reasonable control of the Supplier and without limiting the generality of the foregoing, shall in so far as the same is not within such control, include any one or more Act of God, strike, lockout or other labour difficulty, act of the public enemy, war, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, earthquake, explosion, action, demand, order, restraint, restriction, requirements, prevention, frustration or hindrance by or any government or any government department or authority or other duly constituted authority or statutory corporation or local government authority, embargoes and unavailability of essential equipment and raw materials.
- 29) **FUTURE DEALING**
The terms and conditions specified in the Sales Order shall be incorporated by implication and conduct into all future agreements by the Supplier, to supply Goods, with the Purchaser.
- 30) **COLLECTION COST**
The Purchaser agrees to indemnify the Supplier with all legal costs, charges, expenses and disbursements incurred in the collection or attempted collection of monies due.
- 31) **QUANTITY ESTIMATES**
No responsibility will be taken by the Supplier for over or under estimates to quantities. Additional quantities manufactured or delivered are required to be paid.
- 32) **SECURITY**
The Supplier reserves the right to lodge a caveat on the Purchasers or Guarantors properties for security on monies owing.
- 33) **CONDITIONS OF SALE**
All contracts and agreements entered between the Supplier and the Purchaser are subject to the "General Terms and Conditions of Sale" appearing herein and as amended from time to time and shall prevail where inconsistencies may exist with conditions on the Sales Order or the Purchasers conditions. A facsimile copy of this Account Application Form will be accepted by the Supplier as if it was the original document.
- 34) **GOVERNING LAW**
These "General Terms and Conditions of Sale" shall be governed and construed according to the laws for the time being in force in the State of Western Australia and the parties respectively hereby submit to the jurisdiction of the Courts thereof and all Courts competent to hear appeals therefrom.
- 35) **GENERAL INTERPRETATION**
Where a party comprises of more than one entity then any agreement, warranty, representation or obligation binds those entities jointly and severally; this Agreement (which term in this clause includes the General Terms and Conditions of Sale and without limitation the Sales Order) shall be construed and take effect in accordance with the laws from time to time in force in the State of Western Australia and the parties agree to submit to the jurisdiction of the Courts of that State in connection with all matters involving the interpretation or operation of this Agreement; where the context requires this Agreement must be interpreted as if a word which denotes the singular denotes the plural and vice versa and as if a word which denotes any gender denotes any other gender; the provisions and obligations of this Agreement are independent of each other and if any of them is or becomes illegal or unenforceable the other provisions and obligations remain in full force and effect; a reference to any party includes its or their successors in title or personal representatives as the case may be; if any party is a trustee of a trust then any agreement, warranty, representation or obligation binds such party both in its capacity as trustee and in its own right a reference to any statute includes any consolidated or replacement statute and any regulations or by-laws issued under the statute.
- 36) **NOTICES**
All notices, other documents and communications required or permitted to be given to the Supplier shall be in writing and be addressed to:
URBANSTONE CENTRAL
25-29 FROBISHER STREET
OSBORNE PARK WA 6017
Phone: 08 9340 0010
Fax: 08 9340 0030