



TERMS OF TRADE

These terms and conditions are between **Tumbled Pty Ltd** (ABN 93 638 073 202), (**we, us or our**) and you, the party stated in the Quote (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions and the Quote form the entire agreement under which we will provide the Goods and Services to you (together, the **Terms**).

1 Acceptance

1.1 You have requested the Goods and Services set out in the Quote, and accept these Terms by:

- (a) signing and returning the Quote;
- (b) accepting the Quote online or sending an email accepting the Quote (expressly or impliedly); or
- (c) instructing us to proceed with the Goods and Services or making any payment of the Price (including any deposit).

1.2 Please read these Terms carefully and contact us if you have any questions.

2 Orders

2.1 You may request us to supply the Goods and Services by notifying us online/over the phone/by email or by any other process which we may advise to you, from time to time (**Order Request**).

2.2 We may, in our discretion, accept or reject an Order Request. If we accept the Order Request, we will issue you with a Quote and once you accept the Quote, it will become a binding Order.

2.3 Each Order is subject to, and will be governed by, these Terms and any other conditions expressly set out in the Order. To the extent of any ambiguity or discrepancy between an Order and these Terms, these Terms will prevail.

3 Natural stone disclaimers

3.1 As you are aware, our Goods that are natural stone are a natural product which naturally varies in texture, colour, makeup and does contain natural holes, fissures, markings, colouring and flaws (**Natural Stone**).

3.2 Subject to applicable law, you acknowledge and agree that our sale of Natural Stone to you:

- (a) is not a sale by sample;
- (b) comes with no warranties;
- (c) does not (and cannot) be guaranteed to match material from any samples; and
- (d) means any subsequent order of the same Natural Stone may not come from the same batch which means the Natural Stone will not match the first order of Natural Stone.

3.3 Our images and descriptions of the Natural Stone on our website or sales materials are for illustration purposes only.

3.4 Natural Stone can and does stain. Natural Stone is not stain-proof and is susceptible to etching.

3.5 Subject to applicable law, you acknowledge and agree that:

- (a) it is your sole decision to determine whether the Natural Stone is suitable and fit for your purpose;
- (b) you should obtain independent testing of the Natural Stone to verify suitability for your project and before placing an Order;
- (c) Natural Stone should be professionally installed;
- (d) you are responsible for ensuring all surfaces and substrates are professionally prepared and are suitable for the Natural Stone;
- (e) any advice given on the above matters by us are of a general nature and without regard to your actual circumstances and should be approved by your professional advisors prior to installation;
- (f) it is your responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or by us are approximate only and no responsibility is taken for their accuracy;
- (g) we take no responsibility for Goods that have already been affixed; and
- (h) it is your responsibility to seek independent professional advice for cleaning, sealing and protecting Natural Stone. We will not take any Liability arising out of or in connection to Natural Stone deterioration or discolour, due to cleaning and sealing.

4 Goods and Services

4.1 We agree to provide you with the Goods and Services in accordance with these Terms (including any Specifications) and all relevant laws.

4.2 You acknowledge and agree that any dates for completion or for delivery notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery or milestone date.

4.3 We may provide the Goods and Services to you using our employees, contractors and third party providers (**Our Personnel**), and they are included in these Terms.

4.4 All variations to these Terms must be agreed in writing between the Parties and will be priced in accordance with our Quote, any schedule of rates provided by us, or otherwise as reasonably determined by us.

5 Change management

5.1 You may request a variation or change to the Goods and Services, including the timing for the provision of the Goods and Services, by providing written notice (including by email) to us, with details of the variation or change (**Variation Request**).

5.2 We will not be obliged to comply with a Variation Request unless we accept it, and any effect on the Price (**Price Variation**), and the Price has been adjusted to reflect the Price Variation.

5.3 If we consider that any instruction or direction from you constitutes a variation, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued in accordance with clause 5.1.

6 Your Personnel

6.1 You are responsible for the acts or omissions, or the goods or

	services provided by, your employees, contractors, invitees or others engaged by you (Your Personnel), and you agree to ensure they cooperate with us and do not interfere with our supply of the Goods and Services.			
6.2	You agree that any works, goods or services provided by you or Your Personnel (Your Items) will be:	9.2		
	(a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;		(c)	if applicable, it holds a valid ABN which has been advised to the other Party; and
	(b) provided with due care, skill and diligence;		(d)	if applicable, it is registered for GST purposes.
	(c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws;			You represent, warrant, acknowledge and agree that:
	(d) provided in a proper and professional manner, and in accordance with best industry practice; and		(a)	you will comply with these Terms and all applicable laws;
	(e) in accordance with our reasonable instructions or requirements.		(b)	you have effected and will maintain appropriate insurance policies for the Site for the duration of our provision of the Goods and Services under these Terms;
7	Price and Payment		(c)	there are no legal restrictions preventing you from engaging us, or agreeing to these Terms;
7.1	You agree to pay us the Price in accordance with these Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).		(d)	you will cooperate with us, and provide us with all documentation, information, instructions and access necessary to enable us to provide the Goods and Services, as requested by us, from time to time, and in a timely manner;
7.2	Unless otherwise agreed between the Parties, any Deposit in our Quote is payable within 24 hours after acceptance of these Terms, and must be paid before we commence the provision of the Goods and Services.		(e)	you will not infringe any third party rights in working with us and receiving the Goods and Services (including Intellectual Property Rights);
7.3	Unless otherwise agreed between the Parties:		(f)	you will provide us and Our Personnel with sufficient access to the Site and other facilities at the Site, to enable us to provide the Goods and Services (including at the dates and times that we may reasonably request);
	(a) the Price for any Goods is payable within 2 weeks of them arriving in Australia; and		(g)	you will ensure that the Site is safe and free of harmful materials or substances; and
	(b) we will store any Goods for up to 4 weeks of their arrival in Australia, after which we will charge you \$5 per crate per week.		(h)	you are responsible for obtaining, and providing to us if necessary, any access, consents, licences, Approvals and permissions from other parties necessary for the Goods and Services to be provided, at your cost.
7.4	We will issue invoices to you weekly in respect of the Price. You agree to pay our invoices at the times, and using the payment method, stipulated in our invoice, failing which, we may suspend the provision of the Goods and Services until we receive payment. If you dispute any invoice, you agree to notify us of your dispute in writing within 7 days of the date of our invoice, setting out full details of your dispute.	10		
7.5	We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 2% per annum, calculated daily and compounding monthly, on any amounts unpaid 7 days after the payment date.	10.1	10 Your Statutory Rights	
8	Contractual lien and security interest			Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Goods and Services by us to you which cannot be excluded, restricted or modified (Statutory Rights).
8.1	You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms.	10.2		Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Services, you are entitled:
8.2	You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).		(a)	to cancel these Terms with us; and
9	Your obligations and warranties	10.3	(b)	to a refund for the unused portion, or to compensation for its reduced value.
9.1	Each Party represents, warrants and agrees that:			You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Services does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the contract for the Services and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services.
	(a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business;	10.4		If the ACL applies to you as a consumer, nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Goods and Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.
	(b) that these Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms;	10.5		Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services

(including the Goods and Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.

11 Delivery, title and risk

11.1 If the Parties agree that:

- (a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the Site by the delivery time, as notified by us to you; or
- (b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available the Goods, and you agree to collect the Goods, at the collection location by the collection time, as notified by us to you. You agree to comply with any policies and procedures which apply at the relevant collection location.

11.2 If these Terms state that we are responsible for delivering the Goods to the Site, you agree to pay for all Delivery Costs.

11.3 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid in full. Risk in the Goods will pass to you on delivery of the Goods to your nominated delivery address or collection of the Goods at the collection location (as applicable).

11.4 Where you expressly request us to leave the Goods outside our premises for collection or to deliver the Goods to an unattended location then those Goods will be left at your sole risk and you are responsible for ensuring the Goods are appropriately insured.

11.5 You acknowledge Goods will be delivered to the kerbside of the Site, unless by prior arrangement with us. It is your responsibility to arrange relocation of the Goods from the kerbside to a suitable location on Site.

11.6 If at the Client's request, the delivery vehicle leaves the road and enters the Site to unload the Goods, you must provide suitable and safe access for the delivery vehicle and you will indemnify us, our Personnel and our agents for all damage and injury to any person and to any public or private property which may result from your request, including any costs associated with enabling the delivery vehicle to leave the Site.

12 Defects

12.1 Subject to applicable law, you must inspect the Goods and must within 7 days of delivery (time being of the essence) notify us of any alleged defect, shortage in quantity, damage or failure to comply with the Order. You will allow us to inspect the Goods within a reasonable time following delivery if you believe the Goods are defective in any way.

12.2 Subject to applicable law, for defective Goods, which we have agreed in writing are defective (**Defective Goods**) we will either at our discretion replace the Goods or repair the Goods.

13 Returns

13.1 We will only accept returns if:

- (a) you have complied with the provisions of this clause 13 and we have agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at your cost within 14 days of the delivery date; and
- (c) we will have no Liability for any Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which

they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

13.2 We may accept the return of Goods for credit but this may incur a handling fee of up to 20% of the Price of the returned Goods plus any freight or other costs.

14 TERM AND TERMINATION

14.1 These Terms will commence upon your acceptance in accordance with clause 1.1, and will continue until the earlier of the date:

- (a) we consider the Goods and Services to be complete or supplied to you in accordance with these Terms; or
- (b) these Terms are terminated in accordance with this clause.

14.2 Either Party may terminate these Terms if the other Party has materially breached these Terms and such breach is not rectified within 14 days from the date notice is received by that Party.

14.3 On termination of these Terms;

- (a) we will immediately cease providing the Goods and Services;
- (b) without limiting and subject to your Consumer Law Rights, any amounts paid for Goods and Services rendered by us are non-refundable;
- (c) you agree to pay us all amounts due and payable to us under these Terms (including for all Goods and Services provided by us) up to the date of termination, as a debt immediately due and payable;
- (d) you agree to return or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and to give us or Our Personnel such rights of access necessary to exercise our rights under this clause; and
- (e) by us pursuant to clause 6.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees).

14.4 Unless otherwise agreed between the Parties, if these Terms are terminated, then any outstanding Orders will also terminate on the date of termination.

14.5 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

15 Liability, indemnity and exclusions

15.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for any Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (in respect of any failure by us to comply with relevant Consumer Law Rights) our Liability is limited (at our discretion) to:

- (i) replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing Goods or of supplying equivalent Goods;
 - (ii) the repair of the Goods, or the repayment of the cost of having the Goods repaired; and/or
 - (iii) supplying the Services again or paying the cost of having the Services supplied again.
- (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the Price paid by you to us in respect of the supply of the relevant Goods and Services to which the Liability relates.

16 Intellectual Property

- 16.1 As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of us or Our Personnel (including in connection with these Terms or the provision of the Goods and Services), whether before or after the date of acceptance of these Terms, will at all times vest, or remain vested, in us.
- 16.2 If applicable, you grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use your and your Personnel's Intellectual Property for the performance of our obligations under these Terms.

17 CONFIDENTIALITY

- 17.1 Subject to clause 17.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, all Confidential Information.
- 17.2 Clause 17.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that you ensure the adviser complies with the terms of clause 17.1.

18 GENERAL

- 18.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of South Australia to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 18.2 **Governing law:** These Terms are governed by the laws of South Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in South Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 18.3 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.

18.4 **Joint and several liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.

18.5 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours and in the case of post, or at the time of transmission in the case of transmission by email.

18.6 **Online execution:** These Terms may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.

18.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

18.8 **Survival:** Clauses 3, 10, 12, 13, 14, 15, 17, 18 and 19 will survive the termination or expiry of these Terms.

19 INTERPRETATION & DEFINITIONS

- 19.1 Any reference to "Goods and Services" may mean "Goods and/or Services", as the case may be.
- 19.2 In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote, and:

Approval means any approval, consent, permit, application, registration or equivalent required to be obtained in connection with the Goods and Services by any Authority or any law.

Authority means any national, State, Territory or local government departments, bodies, instrumentalities or other public authorities the approval of which is applicable to or necessary for the provision of the Goods and Services.

Confidential Information includes information which:

- (a) is disclosed to you in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to our business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

Consequential Loss means whether under statute, contract, equity, tort (including negligence), indemnity or otherwise:

- (e) any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission; and/or

- (f) without limiting subclause (a), any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data.

However, the Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".

Deposit is 50% of the total Price.

Delivery Costs means the costs associated with the delivery or provision of the Goods and Services, including any insurance, customs, tariffs, duties or other such charges that may apply to the Goods and Services.

Goods and Services means the goods and services to be provided by us under these Terms, as expressly set out in the Quote or Order.

Intellectual Property means any copyright, registered or unregistered designs or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

Order means an order for the supply of Goods or Services, placed in accordance with clause 2.1.

Price means the price set out in our Quote for the provision of the Goods and Services, and all other reasonable expenses or disbursements properly incurred by us in the provision of the Goods and Services.

Quote means the quote (including any online quote) to which these Terms are attached by reference.

Site means the site as set out in the Quote or Order, and includes any other property or sites adjoined to, surrounding or neighbouring the Site that may be necessary to access or use for the provision of the Goods and Services.

Specifications means any specifications for the Goods and Services, and, if applicable, as further particularised in an attachment to these Terms of the Quote.