

# RMS Natural Stone & Ceramics Pty Ltd – Terms & Conditions of Trade

1.	<b>Definitions</b>	<p>by RMS are approximate only and no responsibility is taken for their accuracy.</p> <p>If the Client orders an insufficient number of tiles, then RMS will take no responsibility for any variation of colour in further batches supplied to the Client.</p> <p>RMS will accept no responsibility for tiles that have been fabricated by adhesives that must not be used.</p> <p>RMS offers no guarantee against crazing, cracking, chipping or scratching.</p> <p>Marble and Granite being porous products, therefore, all products supplied should be sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Client agrees to indemnify RMS against any damage occurring after delivery and installation.</p>	<p>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).</p> <p>The Client indemnifies RMS from and against all RMS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RMS' rights under this clause.</p> <p>The Client irrevocably appoints RMS and each director of RMS 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.</p>
1.1	"RMS" means RMS Natural Stone & Ceramics Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of RMS Natural Stone & Ceramics Pty Ltd.	7. <b>Installation Of Light And Green Coloured Marble</b> Green marble includes a certain degree of copper which undergoes a chemical reaction when exposed to a strong alkaline solution (such as cement and water). Failure of adhesives must not be used when fixing light coloured or green marble as this would cause burning or blistering to the surface of the polished marble tile. RMS accepts no responsibility where any product that is not a pure epoxy adhesive or latexcrete has been used for the fixing of the Goods or in the case of grouting, where other than a pure epoxy grout has been used.	14. <b>Cancellation</b> RMS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice RMS shall repay to the Client any money paid by the Client for the Goods. RMS shall not be liable for any loss or damage whatsoever arising from such cancellation.
1.2	"Client" means the person/s buying the Goods 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.	7.1 <b>Installation Of Light And Green Coloured Marble</b> Acid or acidic based cleaners must not be applied to any marble or granite or natural stone product.	14.1 14.2 14.3
1.3	"Goods" means all Goods or Services supplied by RMS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	7.2 <b>Title</b> RMS and the Client agree that ownership of the Goods shall not pass until:	14.4
1.4	"Price" means the Price payable for the Goods as agreed between RMS and the Client in accordance with clause 4 below.	7.3 <b>Title</b> RMS and the Client agree that ownership of the Goods shall not pass until:	14.5
2.	<b>Acceptance</b>	7.4 <b>Receipt by RMS 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.</b>	14.6
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 the Goods.	7.5 <b>It is further agreed that:</b>	14.7
2.2	These terms and conditions may only be amended with RMS' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and RMS.	7.6 <b>(a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to RMS on request.</b>	14.8
3.	<b>Change in Control</b>	7.7 <b>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for RMS and must pay to RMS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</b>	14.9
3.1	The Client shall give RMS 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, or business practice). The Client shall be liable for any loss incurred by RMS as a result of the Client's failure to comply with this clause.	7.8 <b>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for RMS and must pay or deliver the proceeds to RMS on demand.</b>	14.10
4.	<b>Price and Payment</b>	7.9 <b>(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of RMS and must sell, dispose of or return the resulting product to RMS as it so directs.</b>	14.11
4.1	At RMS' sole discretion the Price shall be either:	7.10 <b>(e) the Client irrevocably authorises RMS to enter any premises where RMS believes the Goods are kept and recover possession of the Goods.</b>	14.12
4.1.1	(a) as indicated on any invoice provided by RMS to the Client; or	7.11 <b>(f) RMS may recover possession of any Goods in transit whether or not delivery has occurred.</b>	14.13
4.1.2	(b) RMS' quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	7.12 <b>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of RMS.</b>	14.14
4.2	RMS reserves the right to change the Price if a variation to RMS' quotation is requested.	7.13 <b>(h) RMS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</b>	14.15
4.3	At RMS' sole discretion a deposit may be required.	7.14 <b>(i) 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 RMS may reasonably require to:</b>	14.16
4.4	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by RMS, which may be:	7.15 <b>(ii) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</b>	14.17
4.4.1	(a) on delivery of the Goods;	7.16 <b>(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);</b>	14.18
4.4.2	(b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;	7.17 <b>(b) indemnify, and upon demand reimburse, RMS 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 Goods charged thereby;</b>	14.19
4.4.3	(c) the date specified on any invoice or other form as being the date for payment; or	7.18 <b>(c) not register a financing change statement in respect of a security interest without the prior written consent of RMS;</b>	14.20
4.4.4	(d) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by RMS.	7.19 <b>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of RMS;</b>	14.21
4.5	Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (Amex incurs a surcharge of three percent (3%) of the Price), or by any other method as agreed to between the Client and RMS.	7.20 <b>(e) immediately advise RMS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</b>	14.22
4.6	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RMS an amount equal to any GST RMS must pay for any supply of Goods by RMS under this or any other agreement. The Client must pay GST without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.	7.21 <b>(f) the Client 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.</b>	14.23
5.	<b>Delivery of Goods</b>	7.22 <b>The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</b>	14.24
5.1	Delivery ("Delivery") of the Goods is taken to occur at the time that:	7.23 <b>The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</b>	14.25
5.1.1	(a) the Client or the Client's nominated carrier takes possession of the Goods at RMS' address; or	7.24 <b>Unless otherwise agreed to in writing by RMS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</b>	14.26
5.1.2	(b) RMS (or RMS' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.	7.25 <b>The Client must unconditionally ratify any actions taken by RMS under clauses 9.3 to 9.5.</b>	14.27
5.2	At RMS' sole discretion the cost of delivery is in addition to the Price.	7.26 <b>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.</b>	14.28
5.3	The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then RMS shall be entitled to charge a reasonable fee for redelivery and/or storage.	7.27 <b>Security and Charge</b> In consideration of RMS agreeing to supply the Goods, the Client charges all of its rights, title and	14.29
5.4	RMS will not unload goods at the point of delivery unless the Client or the Client's duly authorised representative is present at the delivery site to accept delivery and sign for the Goods.	7.28 <b>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 RMS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</b>	14.30
5.5	Goods will be delivered to kerb side only. The Client takes all responsibility for transfer to site from kerb side.	7.29 <b>The Client agrees that RMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which RMS has created for the Client.</b>	14.31
5.6	RMS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	7.30 <b>Without prejudice to any other remedies RMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RMS may suspend or terminate the supply of Goods to the Client. RMS will not be liable to the Client for any loss or damage the Client suffers because RMS has exercised its rights under this clause.</b>	14.32
5.7	Any time or date given by RMS to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and RMS will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.	7.31 <b>Without prejudice to RMS' other remedies at law RMS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to RMS shall, whether or not due for payment, be immediately and irrevocably payable if:</b>	14.33
5.8	The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:	7.32 <b>(a) any money payable to RMS becomes overdue, or in RMS' opinion the Client will be unable to make a payment when it falls due;</b>	14.34
5.8.1	(a) such discrepancy in quantity shall not exceed five percent (5%); and	7.33 <b>(b) the Client becomes insolvent, 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</b>	14.35
5.8.2	(b) the Price shall be adjusted pro rata to the discrepancy.	7.34 <b>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</b>	14.36
6.	<b>Risk</b>	7.35 <b>Where RMS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of RMS.</b>	14.37
6.1	Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.	7.36 <b>The Client warrants that all designs, specifications or instructions given to RMS will not cause RMS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify RMS against any such infringement.</b>	14.38
6.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, RMS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RMS is sufficient evidence of RMS' rights to receive the insurance proceeds without the need for any person dealing with RMS to make further enquiries.	7.37 <b>The Client agrees that RMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which RMS has created for the Client.</b>	14.39
6.3	If the Client requests RMS to leave Goods outside RMS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.	7.38 <b>Without prejudice to any other remedies RMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RMS may suspend or terminate the supply of Goods to the Client. RMS will not be liable to the Client for any loss or damage the Client suffers because RMS has exercised its rights under this clause.</b>	14.40
6.4	The Client acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by RMS to match colour, shade or grain of product, RMS shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.	7.39 <b>Without prejudice to any other remedies RMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RMS may suspend or terminate the supply of Goods to the Client. RMS will not be liable to the Client for any loss or damage the Client suffers because RMS has exercised its rights under this clause.</b>	14.41
6.5	The Client acknowledges that it is the Client's responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Client's figures	7.40 <b>Without prejudice to any other remedies RMS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RMS may suspend or terminate the supply of Goods to the Client. RMS will not be liable to the Client for any loss or damage the Client suffers because RMS has exercised its rights under this clause.</b>	14.42

Please note that a larger print version of these terms and conditions is available from RMS on request.