

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 Order (you or your) (together the Parties and each a Party). Together, these terms and conditions and the Order (together, the Terms) form the entire agreement between the Parties, under which we will provide the Goods to you.

### 1. Orders and acceptance

- 1.1. You may request us to supply the Goods 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). Order Requests made by the you constitute an offer to purchase the Goods. It is your responsibility to ensure Order Requests are accurate in all aspects.
- 1.2. We may, in our discretion, accept or reject an Order Request. If we accept the Order Request, we will issue you with a Quote.
- 1.3. You may accept a Quote by:
  - 1.3.1. signing and returning the Quote to us.
  - 1.3.2. accepting the Quote online or sending an email accepting the Quote (expressly or impliedly).
  - 1.3.3. instructing us to proceed with ordering the Goods; or
  - 1.3.4. making any payment of the Price (including payment of a Deposit).
- 1.4. Once a Quote is accepted by you, it becomes an Order, which constitutes a binding agreement between you and us and acceptance of the Terms.
- 1.5. 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.

### 2. Natural stone disclaimers

- 2.1. The 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).
- 2.2. To the maximum extent permitted by law, you acknowledge and agree that our sale of Natural Stone to you:
  - 2.2.1. is not a sale by sample.
  - 2.2.2. cannot be guaranteed to match material from any samples; and
  - 2.2.3. any subsequent order of the same Natural Stone may not come from the same batch which means the Natural Stone will not match previous orders of Natural Stone.
- 2.3. Our images and descriptions of the Natural Stone on our website or sales materials are for illustration purposes only.
- 2.4. Natural Stone can and does stain. Natural Stone is not stain-proof and is susceptible to etching.

### 3. Variations

- 3.1. You may request a variation or change to the Goods, including the timing for the provision of the Goods, by providing written notice (including by email) to us, with details of the variation or change (Variation Request).
- 3.2. We will not be obliged to accept a Variation Request. If we accept a Variation Request and the Variation Request has an effect on the Price, then the Price will be adjusted to reflect the variation in the Price.
- 3.3. If we consider that any instruction or direction from you constitutes a Variation Request, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued in accordance with clause 3.1.

### 4. Price and Payment

- 4.1. You agree to pay us the Price for the Goods. All amounts are stated in Australian dollars and are exclusive of GST, the Delivery Costs and any taxes and duties (unless otherwise stated).
- 4.2. Unless otherwise agreed between the Parties, any Deposit set out in the Quote must be paid within 24 hours after acceptance of our Quote, and in any case must be paid before we place orders with our suppliers for the Goods.
- 4.3. You must pay the Price in accordance with the terms set out in our invoices for the Goods, including at the times and using the payment methods stipulated in our invoice.
- 4.4. If you fail to pay the Price within the time required by our invoice, we may suspend the provision of the Goods until we receive payment. If you dispute any invoice, you must notify us of your dispute in writing within 7 days of the date of our invoice, setting out full details of your dispute.
- 4.5. All money due to us must be paid without deduction of set off.
- 4.6. 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.

### 5. PPSA

- 5.1. Until we receive full payment of the Price:
  - 5.1.1. we reserve the right to register a Security Interest in relation to the Goods and any other rights it may have at law or under the PPSA (Secured Interests).
  - 5.1.2. you acknowledge that we have a Purchase Money Security Interest (PMSI),

5.1.3. as defined in the PPSA, which attaches over the Secured Interests and their proceeds and a Security Interest in relation to other amounts owed by you to us; and

5.1.4. we reserve the right to enter your premises and retake possession of the Secured Interests.

5.2. The Parties acknowledge that these Terms constitute a security agreement for the purposes of the PPSA in favour of us in respect of the Secured Interests and any proceeds (as defined in the PPSA) of the Secured Interests.

5.3. You undertake to do any such thing reasonably necessary to:

5.3.1. ensure that a PMSI and/or Security Interest is enforceable, perfected and effective; and

5.3.2. enable us to apply for any registration, or give any notification, in connection with the Security Interest created under these Terms so that the PMSI and/or Security Interest has the priority required by us.

5.4. The Parties agree that:

5.4.1. to the extent permitted by section 115(1) of the PPSA, sections 132(4) and 135 of the PPSA are excluded; and

5.4.2. to the extent permitted by section 115(7) of the PPSA, sections 129(2) and (3), 134(2) and 135 are excluded.

5.5. Nothing in this clause 5 prevents us from taking collection or legal action against you to recover any monies owed from time to time.

### 6. Installation and maintenance

6.1. You are solely responsible for ensuring the Goods are suitable and fit for your purposes. We recommend you obtain independent testing of the Goods to confirm its suitability and fitness for your purposes.

6.2. We recommend that the Goods be professionally installed. You are solely responsible for installing the Goods and for ensuring the Site is suitable to install the Goods on. You are responsible for checking the measurements and quantities of the Goods before installation. To the maximum extent permitted by law, we will not be responsible for any Goods already installed.

6.3. We recommend that you obtain professional advice relating to the maintenance of the Goods, including cleaning, sealing and protecting. We will not be liable for any Liability arising out of or in connection to the Goods deteriorating or discolouring as a result of your use or maintenance of the Goods.

6.4. Any advice given by us regarding the installation and maintenance of the Goods is of a general nature only. We will not be liable for any Liability suffered or incurred by you as a result of the installation or maintenance of the Goods by you.

7.1.3. if applicable, it holds a valid ABN which has been advised to the other Party; and

7.1.4. if applicable, it is registered for GST

7.2. You represent, warrant, acknowledge and agree that:

7.2.1. you will comply with these Terms and all applicable laws.

7.2.2. you have effected and will maintain appropriate insurance policies in respect of the Goods and the provision of them in accordance with these Terms.

7.2.3. there are no legal restrictions preventing you from engaging us or agreeing to these Terms.

7.2.4. you will cooperate with us, and provide us with all documentation, information, instructions and access necessary to enable us to provide the Goods, as requested by us from time to time, and in a timely manner.

7.2.5. you will not infringe any third-party rights in working with us and receiving the Goods and Services (including Intellectual Property Rights).

7.2.6. you will provide us with sufficient access to the Site and other facilities at the Site, to enable us to deliver the Goods (including at the dates and times that we may reasonably request).

7.2.7. you will ensure that the Site is safe and free of harmful materials or substances; and you are responsible for obtaining,

### 7. Warranties

7.1. Each Party represents, warrants and agrees that:

7.1.1. 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.

7.1.2. that these Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms.

and providing to us (if necessary) any access, consents, licences, Approvals and permissions from other parties necessary for the Goods to be delivered, at your cost.

8.2.6. to a suitable location on Site.

8.2.7. if the Goods will not be delivered at kerbside, you must provide clear and safe access to the Site, and you will indemnify us and keep us indemnified against any loss or damage suffered by us as a result of such delivery to the Site.

### 8. Delivery

8.1. The Parties shall agree in writing whether:

8.1.1. we will deliver the Goods to your Site; or

8.1.2. you will collect the Goods from us.

8.2. If we are responsible for delivering the Goods to you:

8.2.1. we will use reasonable endeavours to deliver the Goods to the Site by the delivery time, as notified by us to you.

8.2.2. you must pay the Delivery Costs. Unless otherwise specified in writing, the Delivery Costs are in addition to the Price; and

8.2.3. if you are unable to accept delivery, we may in our discretion store the Goods for up to 4 weeks. You will be responsible for costs reasonably incurred by us for the storage and redelivery of the Goods.

8.2.4. delivery of the Goods is deemed to have occurred when they are delivered to the Site either by us or our nominated carrier.

8.2.5. you acknowledge that the 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

8.2.8. where you expressly instruct us to leave the Goods outside of the Site for collection or to deliver the Goods to an unattended location, then the Goods will be delivered at your sole risk, and you are solely responsible for ensuring the Goods are appropriately insured; and

8.2.9. you must affect and maintain the appropriate insurances in respect of the Site.

8.3. If you are responsible for collecting the Goods from us:

8.3.1. you must collect the Goods at the collection location by the collection time notified in writing by us to you. You must comply with any policies and procedures which apply at the relevant collection location.

8.3.2. delivery is deemed to have occurred when the Goods leave the collection location nominated by us in accordance with clause 8.3.1.

8.4. 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 any loss or damage incurred by you as a result of any delays to delivery,

8.5. except to the extent any delay is result of our gross negligence, wilful misconduct or unlawful conduct.

### 9. Title and risk

9.1. Title in the Goods will not pass to you until all amounts due and payable to us under these Terms are paid in full.

9.2. Risk in the Goods will pass to you on delivery of the Goods in accordance with clause 8.

### 10. Defects

10.1. Except as otherwise set out in these Terms, all implied conditions, warranties and undertakings other than the statutory guarantees set out in the ACL (if applicable) are expressly excluded to the maximum extent permitted by law.

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

10.3. For Goods that we have agreed in writing are defective, we will either (in our discretion) replace the Goods with equivalent goods or repair the Goods.

10.4. To the maximum extent permitted by law, the warranties set out in this clause 10 will not cover any defect or damage arising as a result of:

10.4.1. failure by you to properly install or maintain the Goods.

10.4.2. failure by you to follow any instructions or guidance provided by us.

10.4.3. use of the Goods in a manner that is inconsistent with any uses

10.4.4. specified in the Quote or Order.

10.4.5. continued use of the Goods after any defect or damage becomes apparent or would have

10.4.6. become apparent to any reasonably prudent user.

10.4.7. fair wear and tear; and

10.4.8. an event or force majeure.

### 11. Returns

11.1. We will only accept returns of Goods that are defective if:

11.1.1. you have complied with the requirements of this clause 11;

11.1.2. we have agreed in writing to accept the return of the Goods.

11.1.3. the Goods are returned to us at our nominated address at your cost within 14 days of the delivery date; and

11.1.4. 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.

11.2. We may in our absolute discretion 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 Delivery Costs or other costs.

11.3. we will have no Liability for any Goods which have not been stored or used in a proper manner.

### 12. Cancellation

- 12.1. These Terms will commence upon your acceptance of the Quote in accordance with clause 1.3, and will continue until the earlier of the date:
- 12.1.1. the Goods have been delivered to you and paid for in accordance with these Terms; or
  - 12.1.2. these Terms are cancelled earlier in accordance with this clause 0.
- 12.2. We may cancel an Order at any time before delivery by giving written notice to you. Upon giving notice in accordance with this clause 0, we must refund any monies paid by you for the Goods. To the maximum extent permitted by law, we will not be liable to you for any loss or damage suffered by you as a result of cancellation by us in accordance with this clause 0.
- 12.3. You may cancel an Order by giving notice in writing to us. If You cancel an Order in accordance with this clause 12.3, you must pay for any costs reasonably incurred by us relating to the ordering or delivery of the Goods.
- 12.4. A Party may cancel and Order if the other Party:
- 12.4.1. commits a breach of these Terms that is capable of being remedied and fails to remedy that breach with 7 days of receiving written notice requiring them to do so.
  - 12.4.2. commits a breach of these Terms that is incapable of being remedied; or
  - 12.4.3. suffers an Insolvency Event.

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

### 13. Liability, indemnity and exclusions

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

- 13.1. neither Party will be liable for any Consequential Loss suffered or incurred by the other party arising out of or in connection with these Terms.
- 13.2. 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
- 13.4. Our Liability in respect of the Goods under the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) is limited (at our discretion) to replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing Goods or of supplying equivalent Goods.
- 13.5. Our aggregate Liability arising from or in connection with these Terms will be limited to the Price payable by you to us in respect of the Goods to which the Liability relates.

### 14. Intellectual Property

- 14.1. As between the Parties, ownership of all Intellectual Property Rights owned, developed, adapted, modified or created by or on behalf of each Party (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 that Party. Nothing in these Terms shall be construed as transferring to the other Party any right, title or interest

- 14.2. in any Intellectual Property Rights owned by each Party.
- 14.3. If applicable, you grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of this Agreement, to use your Intellectual Property Rights for us to perform our obligations under these Terms.

### 15. Confidentiality

- 15.1. Subject to clause 15.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use, disclose or permit any unauthorised use of, all Confidential Information belonging to the other Party without that Party's prior written consent.
- 15.2. Clause 15.1 does not apply where the disclosure is:
- 15.2.1. required by law;
  - 15.2.2. to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that you as the Customer ensure the adviser complies with the terms of clause 15.1.;
  - 15.2.3. necessary for the disclosing Party to perform its obligations under these Terms.
  - 15.2.4. consented to by the other Party; or
  - 15.2.5. of Confidential Information that is publicly available, other than by a breach of these Terms.

### 16. General

- 16.1. 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 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. All discussions for the purpose of discussion or mediation are without prejudice. No document brought into existence specifically for the purpose of mediation can be evidence in any subsequent litigation by a party. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

- 16.2. Force majeure: Tumbled shall not be liable for Liability caused by delays beyond Tumbled's control, including without limitation acts of God, fire, strike, illness, restrictions by civil or military authority, transportation failure, or inability to obtain labour, materials, or manufacturing facilities. In the event of such delay, the date of the delivery shall be extended for a period equal to the time lost by reason of the delay. Should delivery be hindered, delayed, or suspended by the Customer's instructions or lack of instructions, the Price shall be increased to cover any extra expenses incurred therein.

- 16.3. Assignment: A Party may only assign its rights under these Terms with the prior written consent of the other party, which consent may not be unreasonably withheld.

- 16.4. Amendment: These Terms may only be amended in writing signed by the parties.

- 16.5. No waiver: A Party may only waive a breach of these Terms in writing signed but that party or its authorised representative. A waiver is limited to the instance referred to in the writing, or if no instance is referred to in writing, to past breaches.
- 16.6. No merger: The rights and obligations under these Terms do not merge on completion of any transaction contemplated by these Terms.
- 16.7. 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.
- 16.8. 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 the Price is paid.
- 16.9.
- 16.10. Joint and several liability: Where you constitute two or more individuals or entities, each will be jointly and severally liable under these Terms.
- 16.11. 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.
- 16.12. 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.

- 16.13. 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.
- 16.14. Survival: Clauses 1, 10, 11, 13, 15, 16 and 17 will survive the termination or expiry of these Terms.

## 17. Definitions

In these Terms, the following definitions apply unless the context otherwise requires;

ACL means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Approval means any approval, consent, licence permit, application, registration or equivalent required to be obtained in connection with the Goods 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.

Confidential Information means:

- (a) any term of this Agreement.
- (b) any information acquired by a Party for the purpose of, or under the terms of, or in any way associated with, these Terms; and
- (c) any other information belonging to a Party of a personal or business nature which is of a confidential nature,

but does not include information that is publicly available, other than by a breach of these Terms.

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

- (a) 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
- (b) without limiting sub clause (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".

Corporations Act means the Corporations Act 2001 (Cth).

Deposit is 50% of the total Price.

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

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

Insolvency Event means the happening of any of the following events:

- (a) where the person is a body corporate:
  - (i) the person becomes an externally administered

- (ii) body corporate under the Corporations Act.
- (iii) steps are taken by a third person towards making the person an externally administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
- (iv) a controller (as defined in section 9 of the Corporations Act) is appointed over any of the property of the person or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 days);
- (v) the person is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act and such statutory demand has not been contested;
- (vi) a secured creditor of the body corporate or a related body corporate (as defined in the Corporations Act) of the body corporate exercises its security in relation to its debt; or
- (b) where the person is a natural person:
  - (i) the person authorises a registered trustee or solicitor to call a meeting of his or her creditors or
  - (ii) proposes or enters into an agreement of assignment or agreement of arrangement or a composition with any of his or her creditors;
  - (iii) a person holding a Security Interest in assets of the

- (iv) person enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
- (v) the person commits an act of bankruptcy.

Intellectual Property means all intellectual property rights anywhere in the world (including present and future rights and whether register or unregistered), including without limitation any copyright, designs, trade marks, domain names, know-how, inventions, processes, trade secrets, the right for Confidential Information to be kept confidential, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of any of those rights, including any improvements, enhancements or modifications to those rights.

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, placed in accordance with clause 1.1.

PPSA means the Personal Property Securities Act 2009 (Cth).

Price means the price set out in our Order for the Goods, including all other reasonable

expenses or disbursements properly incurred by us in the provision of the Goods.

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

Security Interest has the meaning given in the PPSA.

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.

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

### 18. Interpretation

In these Terms, unless context otherwise requires:

- 18.1. headings do not affect interpretation;
- 18.2. words importing the singular include the plural and vice versa;
- 18.3. words importing gender include all genders;
- 18.4. another grammatical form of a defined expression has a corresponding meaning;
- 18.5. reference to time is to Adelaide, Australia time;
- 18.6. reference to "dollars", "\$", "\$A", or "A\$" is to Australian currency;
- 18.7. reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 18.8. reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- 18.9. reference to a party includes that party's personal representatives, successors and permitted assigns;
- 18.10. an obligation of two or more parties shall bind them jointly or severally;
- 18.11. reference to a thing (including a right) includes a part of that thing;

- 18.12. mentioning anything after "include", "includes" or "including" does not limit what else might be included.
- 18.13. a provision must not be construed against a party only because that party prepared it; and
- 18.14. if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day after that day.