

1. DEFINITIONS:

- 1.1 **Company** means Design Stoneworks Ltd of 7C Hurricane Way, Airport Industrial Estate, Norwich, NR6 6EZ
- 1.2 **Conditions** means the terms and conditions set out in this document and any special terms and conditions agreed in writing between the Company and the Customer
- 1.3 **Contract** means the contract for the provision of Goods and/or Services
- 1.4 **Customer** means the person firm or company purchasing or agreeing to purchase Goods and/or Services from the Company in accordance with the Conditions
- 1.5 **Deposit** means 50% of the Price plus VAT or such other sum as may be agreed in writing by the Company from time to time
- 1.6 **Goods** means all goods materials or any part thereof being the subject of any contract to which the Conditions apply (whether or not in performance of the Services as defined below) particulars of which are [set out overleaf or otherwise] specified in writing to the Customer
- 1.7 **Price** means the price [set out overleaf] [or calculated in accordance with the rates or charges set out overleaf or in any quotation] or the Company's quoted price for the Goods and/or Services (or where no price has been quoted a reasonable price) excluding VAT
- 1.8 **Services** means the services particulars of which [are set out overleaf] or otherwise specified in writing to the Customer which the Company is to carry out in accordance with these Conditions

2. CONDITIONS APPLICABLE:

- 2.1 The Conditions shall apply to the Contract to the exclusion of all other terms and conditions
- 2.2 No variation to these Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer
- 2.3 Any representations made by the Company's employees or agents concerning the Goods or Services shall not be incorporated into the Contract unless confirmed in writing by the Company and in entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed
- 2.4 Any quotation given by the Company may be withdrawn at any time prior to acceptance by the Customer and in any event shall lapse after 90 days
- 2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other documentation issued by the Company shall be subject to correction without any liability on the part of the Company

3. ORDERS SPECIFICATIONS AND DELIVERY/PERFORMANCE:

- 3.1 No order shall be deemed to be accepted by the Company unless accepted in writing by the Company's authorised representative
- 3.2 The Company reserves the right to make changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance
- 3.3 Any dates quoted for delivery of the Goods and/or performance of the Services are approximate only and the Company shall not be liable for any reasonable delay in delivery/performance and time for delivery/performance

- shall not be of the essence unless previously agreed by the Company in writing
- 3.4 Unless otherwise agreed the Price is exclusive of transportation and delivery
- 3.5 Any alteration to the Contract specification required by the Customer must be notified to the Company promptly in which case the Company may accept such alteration (subject to any increase in the Price to reflect the alteration) at its sole discretion

4 PRICE AND PAYMENT:

- 4.1 Subject to any special terms agreed in writing between the Company and the Customer the Company shall be entitled to invoice the Customer for
 - (a) the Deposit and VAT at the rate prevailing on the date of the Company's invoice on or at any time after acceptance of the order
 - (b) the balance of the Price and VAT (or instalments thereof by way of interim invoices) at the rate prevailing on the date of the Company's invoice before on or at any time after delivery of the Goods/performance of the Services
- 4.2 If at any time before delivery of the Goods/performance of the Services the Company deems it necessary to increase the Price to give effect to any increase in the cost to the Company the Company shall have the right to give written notice of any such increase to the Customer increasing the Price and in the event such increase does not exceed 20% of the Price the Customer shall not have the right to cancel the Contract
- 4.3 Notwithstanding the provisions of clause 4.2 above any increase in the cost to the Company necessitating an increase in the Price which is a result of any change in specification of the Goods and/or Services which is requested by the Customer or as a result of any delay caused by any instructions of the Customer or failure of the Customer to give to the Company adequate information or instructions shall not entitle the Customer to cancel the Contract on receipt of a written notice of such increase in the Price
- 4.4 The Customer shall pay the Company's invoices as may be rendered from time to time either on receipt of the said invoice or (if specifically notified by the Company) within 7 days of the date of the said invoice (the "Due Date"). Time of payment of the Company's invoices shall be of the essence
- 4.5 If the Customer fails to make payment by the Due Date then without prejudice to any other right or remedy available to it the Company shall be entitled to
 - (a) Cancel the Contract and/or suspend any further deliveries of the Goods to the Customer or performance of the Services (whether under this Contract or any other contract with the Customer)
 - (b) Charge the Customer interest at the rate of 5% per annum above Barclays Bank Plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

5. WARRANTIES AND LIABILITIES:

- 5.1 Subject as expressly provided in these Conditions the Company warrants that the Services will be performed with reasonable skill and care and in accordance with the Contract
- 5.2 The Company does not warrant that the use of any software developed in the provision of the Services or comprised in the Goods will meet the Customer's data processing requirements or that the operation of the software (including where in machine readable form) will be uninterrupted or error free and except as otherwise agreed the Company does not warrant that the Goods and/or Services are fit for any particular purpose of the Customer
- 5.3 Any warranty given by the Company in respect of the Goods and/or Services supplied shall be subject to the following conditions:-

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- (a) The Company shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing design or specification supplied by the Customer
- (b) The Customer accepts and acknowledges that the Goods may include natural materials such as granite and stone work and are supplied subject to natural markings, veining's, variations in colour, cracks and vents. These are supplied, stopped or re-enforced where necessary and no claim on this account can be made.
- (c) Any description of the Goods provided by the Company are for guidance purposes only and do not imply suitability for any particular purpose.
- (d) The Customer accepts and acknowledges that the Goods will have natural markings and that it may not be possible to provide an exact resemblance to the samples.
- (e) The thicknesses of the Goods quoted are nominal and no liability is accepted for reasonable variations whatsoever.
- (f) The Customer accepts and acknowledges that templating granite & fabrication is not an exact science and slight tolerances in both overhangs and thickness are to be expected. Our fitting team maybe required to chop out plaster; every care is taken when conducting such operations. However, the Company does not take any responsibility for live plaster falls; it is the responsibility of the Customer to make good these areas. All cut outs need to be in place when templating.
- (g) To ensure the Goods do not crack, use of a chopping board, as a preparation centre is advisable; care must be taken not to drop heavy objects onto the surface.
- (h) The Company shall be under no liability in respect of any defects arising from fair wear and tear the Customer's negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alternation or repair of the Goods without the Company's approval
- (i) The Company shall be under no liability under any warranty condition or guarantee if the Price and VAT has not been paid by the Due Date
- 5.4 The Company shall not be responsible for any defects in Goods and/or Services unless notified to the Company within a period of 28 days from delivery to the Customer. If the Customer shall fail to give such notice then the Goods and/or Services shall be deemed to be in all respects in accordance with the Contract
- 5.5 The Company shall be under no liability in respect of any defect arising through wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration or repair of the goods without the Company's approval.
- 5.6 Any liability of the Company hereunder (except in respect of death or personal injury caused by the Company's negligence) for any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods or Services shall be limited to the excess (if any) of the cost to the Customer in the cheapest available market of similar Goods or Services to replace those not delivered/performed over the Price
- 5.7 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are extended to the fullest extent permitted by Law
- 5.8 Where the Goods and/or Services are supplied under a Consumer Transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by the Conditions
- 6. TITLE AND RISK:**
- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery of the Goods
- 6.2 Notwithstanding delivery and the passing of risk in the Goods or any provision of these Conditions the property in the Goods shall not pass to the Customer until the Company has received in actual cleared funds payment in full of the Price and VAT and the price of all other goods agreed to be sold by the Company to the Customer for which payment is then due
- 6.3 Until such time as the property in the Goods passes to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods
- 6.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Company does so all monies owing to the Company by the Customer shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable
- 7. CANCELLATION:**
- 7.1 Without prejudice to any other right or remedy available to it the Company shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability on the part of the Company to the Customer and if Goods and materials are in transit the Company shall be entitled to stop those Goods and materials and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary in the event that:-
- (a) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or a firm) becomes bankrupt or goes into liquidation (otherwise for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer; or
- (c) the Customer ceases or threatens to cease to carry on business; or
- (d) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly
- 8. FORCE MAJEURE:**
- Neither party shall be liable for any delay in performing or failure to perform (other than a payment obligation) due to any act of god war strike lock-out industrial action fire flood drought tempest or any other event beyond the reasonable control of either party. Such delay or failure will not constitute a breach of this Contract and time for the performance of the affected obligations will be extended by such period as is reasonable
- 9. INTELLECTUAL PROPERTY:**
- 9.1. Unless otherwise agreed the Customer will not acquire any rights in any intellectual property in the Goods or Services or in packaging or under labels which include trade marks or logos other than those belonging to the Customer and any such rights which the Customer may by law acquire will be held by the Customer on trust absolutely for the Company
- [9.2. In the event that the Goods (or any goods comprised in the Goods) include any software then the terms of the Contract shall be deemed to incorporate the terms of any software licence applicable to such goods. In the event of any conflict between the Conditions and the terms of any such software licence then the terms of the software licence shall prevail]
- 9.3. The Customer warrants that it is the sole owner of all intellectual property rights in all documentation art work and such other materials as may be provided to the Company

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hereunder in connection with the supply of Goods and/or provision of the services

- 9.4. The Customer shall keep the Company fully indemnified against all actions claims proceedings costs and damages (including any damages or compensation paid by the Company on the advice of its legal advisors to compromise or settle any claim) arising out of any breaches by the Customer of any of the above warranties in clause 9.3 above

10. GENERAL:

- 10.1 The headings in the Conditions are for convenience only and shall not affect their interpretation
- 10.2 The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through its employees agents or sub-contractors
- 10.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or other provision
- 10.4 No failure of the Customer to exercise any power given to it or to insist upon strict compliance by the Company with any obligation hereunder and no custom or practice of the parties at variance with the terms hereunder shall constitute any waiver of any of the Customer's rights under the Contract
- 10.5 If any provisions of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby
- 10.6 Any notice given hereunder must be given in writing and delivered or sent by post or facsimile transmission to the residence or principal place of business of the party to whom it is addressed
- 10.7 Save as otherwise provided nothing in this Contract shall confer on any third party any benefit of the right to enforce any terms of this Contract
- 10.8 The Contract shall be governed by the laws of England and subject to the jurisdiction of the English courts