

TERMS AND CONDITIONS

1. INTRODUCTION

1.1 Application of these Terms and Conditions

For the purposes of this agreement, "the MSA" is MSA Granite Pty Ltd (ACN 134 501 563), Modern Stone Art (ABN 51 253 716 705 of 18 Lanyon St, Dandenong South Vic 3175) its successors and assigns or any person acting on behalf of and with the authority of; "the Client" is the applicant named on the quote and / or contract provided by the MSA to the Client.

2. QUOTATIONS

2.1 MSA's Quote

The MSA shall give the Client a quote specifying the work required to be done in order to fulfill the Client's instructions and an estimate of the MSA's charge for the performance of such work. All quotations provided by the MSA are best estimate only and do not constitute a fixed offer. Quotations are dependent upon the availability of products and are based on drawings supplied; any variations to supplied drawings may incur additional charges. Quotations do not include templates / substrate, splashbacks, waterfall ends, undermount sinks, basins or any other polished cut out, unless specified.

2.2 Acceptance by the Client

Where the MSA has given the Client a quote:

- a) The MSA need not commence work until the quote has been accepted by the Client;
- b) Acceptance by the Client of the quote will constitute acceptance by the Client of these terms and conditions;
- c) Quotations are valid for sixty (60) days only unless an extension has been authorised by the MSA; and

2.3 MSA May Revise Quote

The MSA may amend the quote, if not accepted within sixty (60) days from the date of the quote, to take into account any rise or fall in the cost of performing the work as quoted and the MSA shall notify the Client of such amendment as soon as practicable thereafter. The MSA will not be obliged to commence work until such time as the Client agrees to the amendment of the quote.

2.4 Variations

Where there are variations to an accepted quote, the Client shall indemnify the MSA from any additional cost incurred by the MSA, should the Client increase the scope of the work to be provided by the MSA. The MSA will not be responsible for any deviations from sizes listed on drawings. More accurate measurements can be obtained from performing a check measure; however, this must be indicated when appropriate, additional costs agreed and all surrounding items installed. These measurements will take precedence over that which is listed on the drawings.

2.5 Unforeseen Circumstances

The MSA shall not be responsible for any problems with the site which are only revealed when installing the stone and / or porcelain. This includes but is not limited to, any issues or additional costs incurred due to modifications to surrounding elements which affect the sizing of the product (walls, cabinetry, benchtops, plumbing, electrical, appliances, drawings revisions). The party responsible for the alterations will be liable for any charges and delays occurred. Any deviation to drawings must be highlighted to the MSA as soon as possible to prevent unnecessary delays. The MSA will carry out any work needed to fix any such problem if it is considered necessary for satisfactory installation of the stone and / or porcelain. Any additional work necessary due to an unforeseen circumstance is a variation and subject to clause 2.4. If a price is not agreed, the Client will be charged the actual cost plus another twenty per cent (20%) for the work.

3. PAYMENT TERMS

3.1 Deposit

The MSA require a deposit from the Client, unless otherwise stated in writing by the MSA. The Client acknowledges the MSA is under no obligation to start any work as requested by the Client until the deposit is received by the MSA in full and when all details pertaining to the contract are finalised. A fifty per cent (50%) deposit is required prior to collection of templates, Progress payment of forty per cent (40%) is then due two days prior to installation, the balance ten per cent (10%) due on the date of installation. For Marble and Granite jobs, a seventy five per cent (75%) deposit is required prior to collection of templates, Progress payment of fifteen per cent (15%) is then due two days prior to installation, the balance ten per cent (10%) due on the date of installation.

3.2 Time for Payment

The Client must, within the time specified by the MSA, upon the Client receiving the MSA's invoice, pay the MSA the amount request. Progress payment is due two days prior to installation and final payments must be paid on the date of installation as per invoice unless otherwise agreed by the MSA. When agreed progress payments are not honored by the Client, the MSA reserves the right to halt any further Work until the outstanding payment is received.

3.3 Interest

The MSA may charge interest at a rate of three percent (3%) calculated on a daily basis on amounts not paid within the time specified in the MSA's tax invoice.

3.4 Remedial Work

The Client hereby agrees that in the event remedial work is required for work completed to date, the Client shall only hold back the amount (

agreed by both parties) of having the work replaced and not the entire due payment. The balance must be paid on receipt of the MSA's invoice or payment claim.

3.5 Cancellation

The Customer will not be entitled to a refund of the deposit for work commence.

4. DELIVERY / SCOPE OF WORKS

4.1 It is the client's responsibility to inform the MSA of when templates and/or substrates will be ready for collection. Templates / substrates collection will be between 8:00 am - 4:00 pm unless otherwise agreed with all parties. All templates / substrates must be fixed to cabinets with all appliances, sinks, basins and taps cuts correct. All sinks and basins must be on site to check all cutouts are correct. If a return visit is required due to templates or cutouts not being correct, an additional cost will apply. MSA will not accept any liability if any cut outs are not correct due to appliances not being available on site at check measure and being asked to continued fabrication based on cabinet makers template cutouts.

4.2 Matching Stone chopping boards will be supplied at an additional \$50.00 + GST each (at the client's request only). All chopping boards must be confirmed by date of check-measure. No guarantees will be made once job has entered fabrication stage, as any leftover material / wastage may be thrown away. The MSA accept no responsibility if material has already been disposed of prior to the request of a chopping board.

4.3 Delivery of stone and / or porcelain shall be made to the Client's nominated address and the Client shall make all arrangements necessary to take delivery of stone and / or porcelain whenever they are tendered for delivery. Delivery of stone and/or porcelain to a third party and / or site nominated by the Client is deemed to be delivery to the Client for the purpose of this agreement. The risk in the Stone and / or porcelain shall pass to the Client upon delivery of the stone and / or porcelain to the Client or its agent or to a third party nominated by the Client.

4.4 In the event the client is unable to take delivery of the stone and/or porcelain as arranged, then the MSA shall be entitled to charge a reasonable fee for redelivery and/or storage.

4.5 It is the client's responsibility to inform the MSA of the location of all works intended prior to the client receiving the quotation. Should the MSA receive the address and these works fall outside a 50km radius from 18 Lanyon St, Dandenong South, the MSA has the right to charge the client additional travel expenses.

4.6 Unless otherwise notified, the MSA will assume all works are on ground level. Should the MSA not be notified prior to receiving the quotation, the client may incur additional installation costs.

4.7 The works commencement date will be put back and/or the completion date advances by whatever time is reasonable in the event that the MSA claim an extension of time where completion is delayed by an event beyond the MSAs control including, but not limited to, any failure by the Client to;

- a) Make a selection; or
- b) Have the site or notify the MSA the site is ready;
- c) Failure to pay a deposit as soon as the invoice is sent; or failure to make a final payment if required.

4.8 Any time or date given by the MSA to the client is an estimate only. The MSA shall not be liable for any loss or damage whatsoever due to a failure by the MSA to deliver the stone and/or porcelain, or any part of them, promptly or at all, where due to circumstances beyond the reasonable control of the MSA, such as adverse weather conditions, supply of stone / porcelain, staff illness and / or other materials by a third party.

5. CLIENT RESPONSIBILITIES

5.1 Preparation of all surfaces to receive the stone and/or porcelain shall be the Client's / Builder / Cabinet Maker's responsibility. No responsibility will be taken by the MSA for the structural adequacy of the surface to receive stone and / or porcelain. Where the MSA is required to install the stone and / or porcelain, the client warrants that the structure of the premises or equipment or joinery in or upon which the stone and / or porcelain is to be installed or erected is sound and will sustain the installation and work incidental thereto and the MSA shall not be liable for any claim, demands, losses, damage costs and expenses caused or arising in connection with the installation and work incidental thereto.

5.2 Templates and substrates (if required) are the responsibility of the client. Templates are not included in the quotation and will be an additional cost if needed for the scope of the works.

5.3 The Client shall ensure that the MSA has clear and uninterrupted access to the site until the MSA's work has been completed and the MSA has been paid in full. The Client will indemnify the MSA from additional costs or penalties if the completion of the MSA's work is delayed due to interrupted site access.

5.4 The client is responsible for any issues or additional costs incurred due to modifications to surrounding elements which affect the sizing of the product, which have not been brought to our attention prior to fabrication (including, but not limited to walls, cabinetry, benchtops, plumbing, electrical, appliances, drawings revisions). The party responsible for the alterations will be liable for any charges and delays occurred. Any deviation to drawings must be highlighted and made in writing to a staff member employed by the MSA as soon as possible to prevent unnecessary delays.

5.5 It is the client's responsibility to disconnect and remove any appliances surrounding the surface of application to enable clear access and avoid any damage. This includes but is not limited to hotplates, sinks, range hoods and power points. The MSA will not accept any liability for damage to appliances that have not been removed.

5.6 It is the clients' responsibility to cover up any appliances prior to installation that cannot / or have not been removed, as well as any flooring, benchtops and / or furniture. Dust sheets supplied by the MSA may have elements and fragments of dust / stone which could potentially scratch

floors, benchtops, and / or appliances. The MSA does not accept any liability should any surface become scratched due to inadequate coverings. It is recommended that the client use new dust sheets to prevent any scratching from occurring.

5.7 It is the Client's responsibility to provide any scaffolding, cranes, lifts and the like for any works where these are required.

5.8 The Client shall give the MSA the right to photograph the completed project. These photographs may be used in the MSA's promotional and / or advertising material.

6. FABRICATION

6.1 For Stone Splashbacks, a minimum 200mm clearance from the periphery of the gas burner to the splashback is required, as per the AS / NZS standards, AS / NZS 4386.2:1996 Domestic Kitchen Assemblies – Installation. You should always consult with the manufacturer of the fireplace / BBQ to ensure that the maximum heat does not exceed the MSAs recommendations.

6.2 Veined and detailed color variations throughout supplier's products are becoming more intense. There can be variation in color, texture, veining throughout the materials. The MSA optimise veins and colors from the number of slabs required to fulfill the optimisation of the job to the discretion of our staffs.

6.3 Vein and color matching is not always possible, there can be many variations in different products. Suppliers cannot guarantee veins / colors will match when joining two slabs together. Vein / Color matching is to be as close as possible using the material from the slab selected. For additional vein / color matching from additional slabs, costing will vary depending on the quantity of additional material required. The MSA will not be responsible for the position of vein placement / color matching beyond what is deemed reasonable.

6.4 If specific designs of patterns are required, the client must provide a detailed design, which may require additional material and will be requoted prior to manufacture. All clients are welcome to visit our display centre to discuss specific requirements.

6.5 'L' shape benchtops / splashbacks will not be fabricated in one solid piece as this does not allow for movement due to thermal expansion. Suppliers will not warrant products against cracking if an 'L' shape is fabricated.

6.6. All stone materials and / or porcelain is by its nature, subject to variations in color, pattern, shade, surface pitting, fissuring, inconsistent spots of color, natural imperfections. Consequently, MSA is not able to guarantee that pattern matching piece by piece, or samples matching material supplied. No allowance have been made for bookmatching or vein matching material quoted. The MSA will not be liable for any slab imperfections and variations in color and grains in products. Please view supplier websites for product warranty cards and terms and conditions

6.7 The MSA will not be responsible for any additional cuts and joint lines required due to site access / safety complications. In this instance, the client will be informed and a professional decision will be made by the MSA as to where the cut will be located in the product.

6.8 The MSA does not recommend using undermount sinks in porcelain benchtops with high exposure to knocks. The MSA will not be responsible if chipping / cracking occurs should the client proceed with an undermount sink; chipping is not a material fault, it is normally due to impact to the edge of a surface. Chips are not covered by warranty. Joints (if required) will not be positioned through a polished cut out.

7. POST INSTALLATION

7.1 MSA will not be responsible for the following;

1) Client change of mind due to personal opinion of the finished aesthetic. When a particular style / color of slab is selected, this will be considered a legal agreement that this is the product to be installed. The client will be obliged to undertake the cost incurred to modify / change the product post fabrication and accept the delays that this would cause.

2) Any damage, chips, cracks thereafter due to other trades working within the area which could potentially cause damage. The MSA is not responsible for any coverings to protect the installed benchtops or splashbacks. It is the client/builder's responsibility to protect the installed product.

3) Caulking of the installed product, must be completed by a professional caulker as this enables the customer to select colors which match other areas throughout the project.

4) Any access or fixing issues to other trades / professionals. Items such as electrical and plumbing should be exposed prior to check measure and / or requirements indicated before fabrication so allowances can be made. Once the product is sealed to the wall / bench, no modifications can be warranted as this will compromise the products integrity, voiding all manufacturing and installation warranties.

5) Cracks which may occur around L shape window recess.

7.2 Any call backs or return visits at fault of any party will be charged at \$300 + GST per hour, minimum 1 hour charge.

7.3 Quotations only take into account the stone and / or porcelain that is required for the job. Any remaining material from slabs remain the property of the MSA.

8. DEFECTS / SCHEDULE OF WARRANTIES

8.1 The Client shall inspect the stone and / or porcelain on the day of installation before the installers have left and shall notify the MSA in writing of any alleged shortage in quantity, damage or failure to comply with the description. The Client shall afford the MSA an opportunity to inspect the work within a reasonable time following installation if the Client believes the stone and / or porcelain is defective in any way. If the Client shall fail to comply with these provisions the stone and / or porcelain shall be conclusively presumed to be in accordance with these terms and conditions and free from any damage. If the product is deemed to be replaced at the cost of the MSA for any reason, we will endeavor to

match the product removed as close as possible.

8.2 To the extent required by the Domestic Building Contracts Act, the MSA warrants that the Work will be carried out in accordance with all relevant laws and legal requirements in an appropriate and skillful way, in accordance with the plans and specifications (where relevant) using materials that are good and suitable for the purpose for which they are intended to be used and that, unless otherwise stated in this contract, those materials will be new.

8.3 Material is warranted as per the terms of the supplier. The MSA limits any warranty for workmanship relating to joins, lamination or mitered strips to two years. The MSA gives no warranty in respect of material.

8.4 Subject to law, the MSA does not have to fix any problem caused by misuse, abuse, wear and tear or normal shrinkage or movement; or any defects in, or problems caused by, work materials or appliances supplied by the Client.

9. RETENTION OF TITLE

The Client hereby irrevocably to the MSA the right, at its sole discretion to remove or repossess any stone / porcelain and sell or dispose of it if the Client fails to pay the amount due. If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the MSA may, without prejudice to any other remedies it may have, repossess any stone / porcelain delivered to the Client on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the MSA by the Client.

10. LIABILITY

10.1 Non-excludable Rights

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Client in relation to the provision of the Stone / porcelain or of Work which cannot be excluded, restricted or modified by the agreement ("Non-excludable Rights").

10.2 Indirect Losses

Notwithstanding any other provision of these terms and conditions, the MSA is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the failure of the MSA to complete or delay in completing the Work or to deliver the Stone / porcelain.

10.3 Force Majeure

The MSA will have no liability to the Client in relation to any loss, damage or expense caused by the MSA's failure to complete the work or deliver the Stone / porcelain as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the MSA's normal suppliers to supply necessary material or any other matter beyond the MSA's control.