

CAV'ART DESIGNER STONE PTY LTD - TERMS + CONDITIONS OF TRADE

1 SUPPLY

1.1 AGREEMENT TO SUPPLY

These Terms of Trade, together with the Initial Order and any Additional Order (defined in clause 1.2), set out the agreement by which CAV'ART Designer Stone Pty Ltd as trustee for CAV'ART Designer Stone Trust (ABN 24 430 674 567) (**CAV'ART**) agrees to supply, and the Customer agrees to buy, the Goods to you or the company which you represent ('**Customer**' or '**you**').

1.2 ORDERS

- (a) CAV'ART will supply the Initial Order to the Customer in accordance with each Quotation accepted by both parties.
- (b) During the Term, the Customer may request additional Goods from CAV'ART (**Additional Order**). A request for an Additional Order should be in the form notified by CAV'ART to the Customer from time to time and must set out:
 - (i) the quantity of the Goods required; and
 - (ii) the date for the collection of the Goods (**Collection Date**);
- (c) CAV'ART may, in its discretion, accept or reject an Additional Order request. Once an Additional Order is accepted by CAV'ART, the Customer will be committed to purchase the Goods and cannot cancel or revoke the Additional Order except in accordance with these terms.

2 TERM

2.1 COMMENCEMENT

This agreement commences on the Start Date and continues in effect until the supply of the Goods has been completed, unless earlier terminated in accordance with clause 10, or extended in accordance with clause 2.2 (**Term**).

2.2 EXTENSION OF TERM

The parties may agree to extend the Term of this agreement by mutual agreement in writing.

2.3 EXPIRY

If any Goods are supplied after the expiry of the Term without the parties having entered into a replacement agreement or otherwise having expressly agreed in writing that these terms will not apply, the terms of this agreement will apply for that supply.

3 PAYMENT

3.1 PAYMENT OBLIGATIONS

The Price payable by the Customer to CAV'ART for Goods is set out in the Quotation or, in the case of an Additional Order, in any other form provided by CAV'ART to the Customer.

3.2 PAYMENT PROCESS

- (a) CAV'ART will provide the Customer with an invoice for amounts payable for Goods supplied under this agreement within 10 days (or as soon as reasonably practicable) after the Goods are ordered.
- (b) The Customer must pay an amount due under a correctly rendered invoice by the due date specified in the invoice and in accordance with the payment instructions set out in the invoice. If not such date is specified, payment must be made within 10 days or the Initial Order or the Additional Order being accepted.

3.3 HOLDING DEPOSIT

- (a) CAV'ART may offer the option for the Customer to order the Goods for collection at a date in the future in exchange for the Holding Deposit.
- (b) If the Customer (or an end client of the Customer) pays the Holding Deposit, CAV'ART will hold the Goods, meaning that they will not be sold to another customer or client of CAV'ART, for a period of 6 weeks or any other period agreed between the parties at the time of the Initial Order or Additional Order (**Holding Period**).
- (c) In accordance with clause 5, title in the Goods is retained by CAV'ART during the Holding Period.
- (d) After the Holding Period:
 - (i) if the Customer wishes to purchase the Goods, they (or the relevant end client) must pay the Price in full;
 - (ii) if the Customer does not wish to purchase the Goods, the Holding Deposit will be returned to the Customer (or relevant end client).

3.4 GST

Unless otherwise indicated, amounts payable under this agreement do not include GST. In relation to any GST payable for a taxable supply by CAV'ART, the Customer must pay the GST subject to CAV'ART providing a tax invoice.

4 COLLECTION

- (a) Except where specifically agreed in writing, all Goods must be paid for in full in advance of collection.
- (b) CAV'ART will make the Goods available for collection at the address notified to the Customer upon placing the Order on the Collection Date.
- (c) After collection of the Goods has been completed, CAV'ART may in its discretion choose to accept a return of the Goods within two weeks in exchange for a Restocking Fee provided that the Goods are in the same condition as when the Goods were collected and have not undergone any Processing.

5 TITLE AND RISK

- (a) Until Goods are paid for in full, title in those Goods will be retained by CAV'ART.
- (b) Risk in the Goods will pass when the Goods are collected (by the Customer or by a third party authorised by the Customer to collect the Goods).

- (c) If the Customer does not pay for any Goods on the due date for payment, the Customer authorises CAV'ART, its employees and agents to enter any premises occupied by the Customer (or any other place where the Goods are located) and use reasonable force to retake possession of the Goods without liability for trespass or damage.
- (d) CAV'ART may at its option keep or resell Goods retaken from the Customer.
- (e) If the Customer sells the Goods or sells items into which the Goods are incorporated before payment in full has been made to CAV'ART, the Customer acknowledges that such sale is made by the Customer as bailee for and on behalf of CAV'ART, to hold the proceeds of sale on trust for CAV'ART, in an account in the name of CAV'ART, and must pay that amount to CAV'ART on demand.

6 PROCESSING

- (a) The parties acknowledge and agree that CAV'ART is only engaged as the supplier of the Goods to the Customer. CAV'ART has no responsibility to the Customer for the transportation, installation, cutting, fabrications, or other processing (**Processing**) of the Goods.
- (b) Any agreement for the Processing of the Goods is between the Customer and the third party provider or the Processing and not CAV'ART.
- (c) Except where otherwise required by law, CAV'ART provides no warranty on the Goods once they have undergone any Processing.

7 SPECIFICATIONS AND QUALITY

- (a) CAV'ART will use reasonable commercial efforts to ensure Goods supplied to the Customer under this agreement meet the Specifications set out in the Quotation or as otherwise notified to the Customer from time to time (**Specifications**), however:
 - (i) the Customer acknowledges that the Specifications depend on a variety of factors beyond CAV'ART's control and are provided as a guide only;
 - (ii) CAV'ART cannot guarantee that the Goods will be consistent with the Specifications and will not be liable for any failure of the Goods to meet the Specifications.
- (b) Due to the nature of the Goods, the Goods may contain inherent variations in colour, texture, quality, and veining (**Natural Variations**). The Customer acknowledges that:
 - (i) the Natural Variations are unique characteristics of the Goods and do not constitute defects; and
 - (ii) no refund or replacement will be provided for any discrepancies arising from Natural Variations in the Goods.

8 FORCE MAJEURE

- (a) CAV'ART will not be liable for any delay or failure to perform its obligations under this agreement if such delay or failure arises out of a Force Majeure Event.
- (b) If a Force Majeure Event occurs, CAV'ART must use reasonable endeavours to notify the Customer of:
 - (i) reasonable details of the Force Majeure Event; and

- (ii) so far as is known, the probable extent to which CAV'ART will be unable to perform or be delayed in performing its obligations under this agreement.
- (c) Subject to compliance with clause 8(b), the relevant obligation of CAV'ART will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of CAV'ART; or
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic;
 - (iv) unanticipated shipping delays or wharf congestions; or
 - (v) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of CAV'ART, to the extent it affects CAV'ART's ability to perform its obligations.

9 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

10 LIABILITY

- (a) (**Limitation of liability**) To the maximum extent permitted by applicable law, the maximum aggregate liability of CAV'ART to the Customer in respect of loss or damage sustained by the Customer under or in connection with this agreement is limited to the total fees paid to CAV'ART by the Customer in the 6 months preceding the first event giving rise to the relevant liability.
- (b) (**Consequential loss**) CAV'ART will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement or any goods or services provided by CAV'ART, except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any other applicable law.

11 TERMINATION

11.1 TERMINATION

Either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party:

- (a) is in breach of this agreement and either:

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- (i) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
 - (ii) that breach is not capable of remedy; or
- (b) ceases, suspends or threatens to cease or suspend to conduct its business.

11.2 ACCRUED RIGHTS AND LIABILITIES

The expiration or termination of this agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this agreement occurring prior to expiration or termination of this agreement.

11.3 CONSEQUENCES OF EXPIRATION OR TERMINATION

Upon expiration or termination of this agreement:

- (a) CAV'ART will make available for collection to the Customer any Goods which were the subject of any outstanding orders received by CAV'ART from the Customer prior to the date of expiration or termination of this agreement; and
- (b) the Customer will immediately pay CAV'ART:
 - (i) for the Goods referred to in clause 11.3(a); and
 - (ii) any other amounts still owing by the Customer to CAV'ART as at the date of termination or expiry of this agreement.
- (c) Both parties must return to the other party any documents that contain any confidential information of the other party.

11.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

12 NOTICES

- (a) A notice or other communication to a party under this agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring Business Day in that state or territory; or
 - (ii) when replied to by the other party,whichever is earlier.

13 GENERAL

13.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

13.2 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

13.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

13.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

13.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

13.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

13.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

13.8 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

13.9 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

13.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender include the corresponding words of any other gender;

- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.

14 DEFINITIONS

In this agreement the following definitions apply:

Term	Meaning
Additional Order	The meaning given to it in clause 1.2.
Business Day	A day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Sydney, New South Wales.
Start Date	The Start Date as set out in the Quotation.
Collection Date	The collection date set out in a Quotation or as agreed between the parties from time to time.
Collection Address	The Collection Address set out in Quotation or as agreed between the parties from time to time.
Initial Order	The Initial Order for Goods set out in Quotation.
Quotation	Means each invoice, quotation, proposal, or order form under which the Customer agrees to procure the Goods from time to time.
Price	The Price set out in Quotation.

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Term	Meaning
Holding Deposit	The Price set out in each Quotation or as otherwise agreed from time to time.
Specifications	The Specifications set out in the Quotation, on CAV'ART's website, or as otherwise notified to the Customer from time to time.
Restocking Fee	As specified in each Quotation.
Goods	The Goods as described in each Quotation.
