



Supply Terms

Capricorn Sandstone

For the supply of sandstone by Capricorn Sandstone Quarries Pty Ltd ACN 097 933 205 (**we/us/our**).

These supply terms (**Terms**) and our Quote form the basis of our agreement with you (together the **Agreement**) and are our offer of Sandstone Products to you.

1. Acceptance

- (a) You accept our offer, if after receiving it, you:
 - (i) communicate your acceptance of our Quote (either orally or in writing)
 - (ii) sign and return an Order Confirmation;
 - (iii) make payment of the Deposit or invoice issued; or
 - (iv) request (either orally or in writing) that we supply you with the Sandstone Products.
- (b) Our Quote will automatically expire 30 days from the date of issue if not accepted.

2. Quote

- (a) Our Quote may take different forms and may also be made up of separate parts, which are to be taken as joined and to form one single document.
- (b) Our Quote will, among other things, identify the type and grade of the Sandstone Products ordered (with reference to our Product Catalogue) and include any specifications for the supply of the Sandstone Products.
- (c) You must tell us immediately if you disagree with anything contained in our Quote or if you think we have misunderstood your requests.
- (d) We reserve the right to reasonably amend our Quote before fulfillment, where there has been a material rise or fall in the cost of supply. We will notify you as soon as practicable after we become aware of a fluctuation that will cause an amendment to the Quote.
- (e) If there is any inconsistency between these Terms and the Quote, the Quote will prevail to the extent of that inconsistency.

3. Variations

- (a) Subject to clause 2(d), the Quote may only be varied by written agreement between the parties.

- (b) You acknowledge and agree that any variations to the Quote will result in changes to the amounts set out in the Quote and our lead times.

4. Processing, collection or delivery and inspection

4.1 Processing and lead time

- (a) Unless Your Order does not include Custom Products and has been made using an Account, we will not commence processing the Sandstone Products until we have received payment of the Deposit or the relevant invoice in full (as required).
- (b) Once the Sandstone Products have been processed, we will provide you with a Ready Notification which will set out relevant collection instructions or delivery details (as the case may be).
- (c) You acknowledge and agree that processing and preparing the Sandstone Products involves a lead time. Any lead times we give are our best estimate only. We will not be responsible for any Loss suffered by you as a consequence of our delay.
- (d) We will take reasonable steps to mitigate and minimise delay on our part and the impact such delay may cause. We will also use our best endeavours to notify you of any adjustments to lead times previously detailed.

4.2 Collection

- (a) Where you are responsible for collection as detailed in the Quote, you must collect the Sandstone Products at your cost and expense within 21 days of receipt of the Ready Notification during Business Hours, provided you have first made an appointment with us.
- (b) If you fail to collect your Sandstone Products in accordance with (a), we may charge you reasonable Storage Fees.
- (c) You must strictly comply with all WH&S Directions, instructions and requirements that are provided to you whilst you are on Site.

4.3 Delivery

- (a) We will use our best endeavours to:
 - (i) comply with the delivery details set out in the Ready Notification; and
 - (ii) provide you with delivery updates, setting out further delivery specificity and where we are unable to comply with any delivery details previously provided.
- (b) We will deliver the Sandstone Products:

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- (i) to the nominated delivery address in the Quote (**Delivery Address**);
 - (ii) to the kerbside of the Delivery Address (**Delivery Location**), provided that the Delivery Location is safe, within the boundary of the property (unless permit confirmed or expressly requested), easy to access and not likely to impede any third parties. If the Delivery Location does not meet these criteria, we will return the Sandstone Products to our quarry or other storage facility.
- (c) If delivery cannot be affected under (b) due to a problem with the Delivery Location or you request for delivery to be delayed:
- (i) you acknowledge and agree that you will be responsible for the reasonable costs relating to the return, storage and redelivery of the Sandstone Products to our Site or such other reasonable storage location as we determine in our absolute discretion; and
 - (ii) we will provide you with notice of the delivery failure, set out anticipated additional costs with payment terms and provide instructions for rescheduling delivery, which we will make in accordance with (a).
- (d) You agree that:
- (i) if we deliver the Sandstone Products in accordance with (b), we have entirely discharged our delivery obligations; and
 - (ii) you are solely responsible for moving the Sandstone Products from the Delivery Location.

4.4 Inspection

- (a) You are responsible for inspecting the Sandstone Products at the time of collection or within 3 Business Days of delivery.
- (b) If the Sandstone Products do not satisfy the criteria in the Quote, you must provide us with notice of the issues (along with pictures illustrating the issues, where we are not able to view the Sandstone Products).

5. Charges and payment

5.1 Deposit

- (a) We may where set out in the Quote, require you to make payment of the Deposit before we commence processing your Order.

- (b) The Deposit will be applied by us against any amount owing to us under this Agreement, following the issue of our invoice/s to you.

5.2 No account / Custom Products – payment timing

- (a) You must pay the amounts set out in the Quote for the Sandstone Products and any associated charges (including freight) in the manner specified in our Quote.
- (b) Subject to sub-clause 5.3, we may require full payment of the Sandstone Products and any associated charges (including freight) before we commence processing, allow collection or cause for delivery to be effected.
- (c) Where you have paid in full, we will issue you with a tax invoice following receipt of the funds.
- (d) Where payment for the Sandstone Products has not been made in full, we will invoice you at the time set out in the Quote or as we otherwise reasonably determine. You must make payment of any balance due, in the manner and within the time frame set out in the tax invoice.

5.3 Account – payment timing

Where you have an Account with available credit and Your Order does not include Custom Products:

- (a) we will issue a tax invoice at the end of each calendar month, or at such other times agreed between us; and
- (b) payment for the Sandstone Products is to be made in the manner and within the time frame set out in the tax invoice.

5.4 Payment generally

- (a) All payments must be made in cleared funds without set-off, or counterclaim, deduction or withholding.
- (b) If you fail to pay any amount owing under this Agreement when due, we may:
 - (i) charge you for all costs and expenses incurred by us in recovering the outstanding amount from you;
 - (ii) charge you compound interest at a rate of 10% per annum on the overdue amount which will begin accruing on the first day that payment is overdue; and
 - (iii) immediately suspend the provision of any and all Sandstone Products to you until payment of all arrears is received by us.

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6. Returns

- (a) Except where the Sandstone Products were not to specification, the Sandstone Products are not capable of being returned to us for any reason, unless:
- (i) we have expressly agreed;
 - (ii) you have delivered the Sandstone Products to our quarry or other reasonably nominated storage facility at your cost; and
 - (iii) they are undamaged, in good condition, in original or equivalent packaging (if applicable) and accompanied by a dispatch note stating the invoice number, date of supply and reason for return.
- (b) Where we have accepted a return, you will be issued with a credit not a refund.

7. Termination of Agreement

7.1 Termination by you

- (a) If you wish to cancel your Order you must notify us in writing as soon as possible, subject to sub-clauses (b) and (c).
- (b) You cannot cancel your Order if:
- (i) the production of the relevant Sandstone Products has commenced; or
 - (ii) we have already dispatched the Sandstone Products for delivery,
- unless we otherwise agree in writing.
- (c) Cancellation will not be effective unless confirmed by us in writing.

7.2 Termination by us

- (a) We may refuse to supply the Sandstone Products outlined in our Quote at any time where:
- (i) the Sandstone Products are unavailable for any reason whatsoever;
 - (ii) our Quote is more than 30 days old;
 - (iii) you become insolvent, enter to administration or you otherwise cease to conduct your business in the normal manner (where the Sandstone Products are purchased using your Account);
 - (iv) you have not complied with your obligations under this Agreement; or
 - (v) there is a dispute between the parties.

- (b) Upon cancellation under sub-clause (a)(ii) we may issue you with an updated Quote (**Updated Quote**) for your acceptance in accordance with clause 1.
- (c) Where you have already paid a Deposit under the cancelled Quote and you:
- (i) accept the Updated Quote, we may require you to pay any additional amount to us before we will commence processing your Order, in accordance with clauses 3(a) and 5.1; or
 - (ii) refuse the Updated Quote, we will refund the Deposit to you less any amount deducted to cover any monies owed to us under this Agreement.
- (d) A refusal to supply under sub-clause 7.2 will not affect our right to institute legal proceedings for the recovery of any monies owed to us.

7.3 Termination for breach

- (a) If either party breaches any of these Terms and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).
- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this Agreement immediately by notice in writing to the party in breach.

7.4 Refund of Deposit

Where you have paid a Deposit and:

- (a) successfully cancelled your Order under clause 7.1;
 - (b) we have cancelled your Order under clauses 7.2(a)(i) or 7.2(a)(iii) to 7.2(a)(v); or
 - (c) your Order has been cancelled under clause 7.3,
- we will refund the Deposit to you less any amount deducted to cover any monies owed to us under this Agreement.

8. Risk

Risk in the Sandstone Products passes to you immediately upon collection or delivery to the Delivery Address.

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9. Retention of title

- (a) Legal and equitable title and property in the Sandstone Products remains with us until full payment of all amounts owing under this Agreement are received by us. Title will not pass to you nor to any person the Sandstone Products are purported to be sold to by you until full payment has been received by us.
- (b) You may, on your own account as principal, sell the original Sandstone Products supplied in the ordinary course of your business subject always to our title in respect of the Sandstone Products under clause 9(a).
- (c) Until payment in full has been received by us, you will:
 - (i) hold the Sandstone Products as our agent;
 - (ii) store the Sandstone Products separately so that they can be identified as our property, and must not mix the Sandstone Products with other Sandstone Products;
 - (iii) insure the Sandstone Products for their full replacement value and have our name noted on the policy as an interested party;
 - (iv) to the extent that the sale of Sandstone Products results in proceeds, hold such proceeds (up to the total amount owing to us) as trustee for us.
- (d) Until payment in full has been received you must not:
 - (i) claim any interest in the Sandstone Products to secure any liquidated or unliquidated debt or obligation;
 - (ii) claim a lien over the Sandstone Products or any part of them; or
 - (iii) create or purport to create any interest in the Sandstone Products in favour of any other person without our consent.
- (e) Where the Sandstone Products are in your possession, custody or control, we may, with or without prior notice to you, enter upon any premises at which the Sandstone Products or any part of them are stored, or at which we reasonably believe they are stored, to inspect and/or take possession of them. You agree to provide us with access and authority to any such premises for that purpose. We may direct you to deliver the Goods to us and you must comply with such a direction.
- (f) You must pay our costs and expenses in exercising our rights under this clause 9 and must indemnify

us against any Claim arising directly or indirectly out of the exercise by us of any power or right under this clause. Where we exercise any power to enter premises, that entry will not give rise to any action of trespass or similar action on your part against us or any of our Representatives.

- (g) We may sell or otherwise deal with the Sandstone Products we have repossessed.

10. Personal Property Securities Act

- (a) You acknowledge and agree that our retention of title in clause 9 constitutes a security agreement for the purposes of the PPSA and creates a security interest in our favour in the Sandstone Products supplied under this Agreement.
- (b) It is the intention of the parties that the security interest in the Sandstone Products is a purchase money security interest (including proceeds from the sale of the Sandstone Products).
- (c) You agree that immediately upon:
 - (i) the creation of your Account; or
 - (ii) your failure to adhere to the payment terms in clause 5,
 all amounts owing to us under this Agreement are a secured debt, with the security being a security interest in all your present and after-acquired property (including any proceeds from the sale of such property).
- (d) You agree that we may attend to registration of any of our security interests on the PPSR without notice to you.
- (e) You undertake to:
 - (i) promptly sign any further documents and/or provide any further information which we may reasonably require to:
 - (A) register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - (B) register any other document required to be registered pursuant to the PPSA; and
 - (C) correct a defect in a statement or document referred to in clauses 10(c)(i) & (ii);
 - (ii) pay us for all expenses incurred in registering a financing statement or financing change statement on the PPSR or

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releasing any property we have a security interest in;

- (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Sandstone Products in favour of a third party, without our prior written consent;
- (iv) give us not less than 14 days written notice of any proposed changes in your personal details, including but not limited to changes in name, address, facsimile number, email address, trading name or business practices; and
- (v) pay us for any costs incurred by us, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to s182 of the PPSA and/or enforcing or attempting to enforce any security interest created in favour of us under this Agreement or otherwise.

- (f) The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Agreement.
- (g) Pursuant to section 144, you waive your rights to receive notices under sections 95, 118, 121, 130, 132 and 135 of the PPSA.
- (h) You waive your rights as a grantor and debtor under sections 142 and 143 of the PPSA.
- (i) You waive your rights to receive a verification statement in accordance with section 157 of the PPSA.
- (j) Any payments by the you under this Agreement will be applied in the order specified in section 14(6)(c) of the PPSA regardless of any direction or request by you, any agreement between the parties (express or implied) or the application of any such payment by us. We do not waive any rights under this clause by applying any payment in a different order.

11. Warranties

You acknowledge and agree that:

- (a) we give no warranty that the Sandstone Products are sufficient or adequate for your purposes.
- (b) in choosing the type and grade of the Sandstone Products and assessing their suitability for your required purposes, you have relied entirely upon your own knowledge, skill and judgment and have not relied upon our skill and judgment nor upon any promise or representation made or allegedly made by us.

12. Sandstone Products

12.1 Natural Products

- (a) The Sandstone Products are Australian sandstone, which is subject to variations in colour, texture, internal markings and other physical properties.
- (b) You acknowledge and agree to accept the Sandstone Products supplied containing the range of colour and textural variations common to stone and other similar natural products, including natural defects which might reasonably be expected in the type and grade of the Sandstone Products ordered.
- (c) You acknowledge that any Sandstone Products designated within our Product Catalogue as 'Quarry Run' are sold directly in a more rugged state, without additional processing, and are likely to contain natural imperfections.

12.2 Care

- (a) We recommend you:
 - (i) obtain professional advice prior to determining whether your Sandstone Products should be sealed at the time of installation to maintain their quality; and
 - (ii) not install your Sandstone Products in or near any environment in which the Sandstone Products might be exposed to abrasion or chemicals (including salt).
- (b) You acknowledge and agree that the Sandstone Products will naturally deteriorate over time when exposed to the weather, and that this deterioration may be accelerated by a number factors including:
 - (i) a lack of regular or proper maintenance;
 - (ii) the particular location of the Sandstone Products;
 - (iii) exposure to extreme weather;
 - (iv) improper or deterioration of joint materials;
 - (v) the use of de-icing salts or improper sealants or coatings; or
 - (vi) poor copings and flashing details or materials.

12.3 Installation

You acknowledge and agree that your installation of the Sandstone Products is done entirely at your own risk and that, in conducting the installation, you have relied entirely upon your own knowledge, skill and judgment and have not relied upon our skill and judgment nor upon any promise or representation made or allegedly made by us.

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13. Limitation of liability and indemnity

13.1 Limitation of liability

- (a) All information, specifications and samples provided by us are approximations only and, subject to any guarantees under the ACL, small deviations or slight variations which do not substantially affect your use of the Sandstone Products will not entitle you to reject them upon delivery, or to make any Claim in respect of them.
- (b) Unless otherwise required by law, our liability for any breach of the Agreement in contract, tort (including negligence) or equity is limited, at our option, to:
 - (i) the replacement of Sandstone Products supplied;
 - (ii) the supply of equivalent Sandstone Products;
 - (iii) the cost of replacing the Sandstone Products supplied or of acquiring equivalent Sandstone Products;
 - (iv) the amount paid by you to us under the Agreement; or
 - (v) the amount paid out under an insurance policy we hold (less any excess).
- (c) Any claim for short or wrongful delivery must be notified to us within 14 days after the date of delivery.
- (d) To the maximum extent permitted by law, we will not be liable for any Loss or Consequential Loss incurred by you or any other person whether directly or indirectly related to this Agreement.

13.2 Indemnity

You agree to indemnify us and keep us indemnified against any Loss that may be incurred by us arising from or in connection with any breach or default by you of this Agreement.

13.3 Limitation

To the extent that any Claim or Loss occurs as a result of any negligent act or omission caused by us or our failure to comply with the material obligations of this Agreement, your liability under clause 13.2 will be proportionately reduced.

14. General matters

14.1 Interpretation

In interpreting this document:

- (a) headings are for convenience only and will not affect interpretation of this Agreement;
- (b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- (c) a reference to legislation or other law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and
- (e) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Corporations Act 2001* (Cth) have the meaning given in that Act, unless the context otherwise requires.

14.2 Survival and essential terms

- (a) Clauses 5, 6, 7, 9, 10, 11, 13, 14.3 and 14.8 and are taken to survive this Agreement.
- (b) Clauses 4, 5 and 9 are essential terms of this Agreement.

14.3 Assignment

- (a) Subject to clause 14.3(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another entity or otherwise sell or dispose of our business, we may assign or novate this Agreement, including all materials, personal information, confidential information and ideas supplied by you, to that other entity, provided that entity agrees to be bound by the stipulations in this Agreement or to stipulations equivalent in effect.

14.4 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

14.5 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

14.6 Force majeure

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A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay:

- (a) is caused by a circumstance not within the reasonable control of the party; and
- (b) could not have been reasonably avoided, prevented or circumvented by the party.

14.7 Waiver

The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

14.8 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

14.9 Severability

Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which will remain in force.

15. Definitions

Account means your credit account established for you to receive Sandstone Products on credit from us.

ACL means the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and includes any regulations forming part of or passed under it.

Business Day means a day (other than a Saturday or Sunday) on which banks are ordinarily open for business in Rockhampton, Queensland, Australia.

Business Hours means 7:30am to 3:30pm (AEST) on any Business Day.

Claim includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Consequential Loss means indirect economic Loss, Loss of income or profit, Loss resulting from wasted time, damage to goodwill or business reputation, Loss of opportunity or any other special, indirect, remote or punitive Loss.

Custom Product means Sandstone Products which are specially made according to your specifications or particular set of requirements.

Deposit means an amount typically 30% of the total cost of the Sandstone Products, as outlined in our Quote.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Order Confirmation means the document we provide to you with Your Order where Your Order includes Custom Products.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any Regulations forming part of or passed under it.

Product Catalogue means the list of sandstone products available for purchase from us as set out on our website and updated from time to time at our discretion.

Quote means our formal notice to you of the price charged for the Sandstone Products in Your Order, and includes notice by way of email, pricelist or invoice.

Ready Notification means any communication to you that Your Order is ready for collection or delivery (as the case may be) which may take the form of an email, telephone call, voice message, text message or such other method we consider reasonable in the circumstances.

Sandstone Products means the sandstone products supplied or to be supplied by us in accordance with our Quote and these Terms and, for the purposes of clause 9, includes commingled Sandstone Products and any other item in which any Sandstone Products may be incorporated as parts, components or materials and the proceeds of sale of any of them.

Site means our quarry or any other storage facility we are using.

Standard Product means Sandstone Products which are pre-made by us and available for purchase.

Storage Fees means the fees set out in Annexure A to these Terms.

WH&S Directions means any directions provided by us to ensure your health and safety whilst on Site, included as may be required under the *Workplace Health & Safety Act 2001* (Qld).

Your Order means your order of Sandstone Products as notified to us verbally or in writing or as otherwise detailed in our Quote.

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