

## TERMS AND CONDITIONS OF SALE

### 1. General

1.1 "SEQ LANDSCAPE SUPPLIES PTY LTD" means SEQ LANDSCAPE SUPPLIES PTY LTD ABN 84 623 145 719: its successors and assigns and a reference to SEQ LANDSCAPE SUPPLIES PTY LTD includes a reference to employees and agents of SEQ LANDSCAPE SUPPLIES PTY LTD.

"the Purchaser" means a person who buys or agrees to buy the goods and includes the Purchasers successors, executors, assigns, employees and agents.

"the goods" refers to product and services sold or agreed to be sold by SEQ LANDSCAPE SUPPLIES PTY LTD to a Purchaser.

A "contract" means a legally binding agreement for the sale of goods by SEQ LANDSCAPE SUPPLIES PTY LTD to the Purchaser.

A "ruling price" means the price for a particular product as stated in the current price guide list issued by SEQ LANDSCAPE SUPPLIES PTY LTD or the purchase price given in the quote or invoice by SEQ LANDSCAPE SUPPLIES PTY LTD.

1.2 All goods sold, or agreed to be sold, by SEQ LANDSCAPE SUPPLIES PTY LTD are sold subject to these terms and conditions as amended from time to time by SEQ LANDSCAPE SUPPLIES PTY LTD at its discretion. All amendments shall be notified to the Purchaser in writing. No other agreements, understandings, or documents (whether or not they be later in time) shall affect the relationship between the parties unless agreed to in writing by SEQ LANDSCAPE SUPPLIES PTY LTD and in any exchange of documentation these terms and conditions shall be deemed the last document.

1.3 Where any special terms and conditions relating to delivery of specific goods and services are inconsistent with the general terms and conditions, then the special terms and conditions shall prevail over the general terms and conditions to the extent of the inconsistency.

1.4 These conditions shall be incorporated in any future contract between the Purchaser and SEQ LANDSCAPE SUPPLIES PTY LTD.

### 2. Contracts

2.1 A contract will be deemed to have been created upon receipt by SEQ LANDSCAPE SUPPLIES PTY LTD of a deposit of Twenty per cent (20%) of the quote as provided by SEQ LANDSCAPE SUPPLIES PTY LTD. SEQ LANDSCAPE SUPPLIES PTY LTD will not be liable and no contract will be deemed to have taken effect until the 20% deposit has been provided by the purchaser.

2.2 Where an order is made pursuant to a written quotation by SEQ LANDSCAPE SUPPLIES PTY LTD, the terms of the contract shall be the terms of the quotation (as amended) and these terms and conditions shall prevail.

2.3 SEQ LANDSCAPE SUPPLIES PTY LTD may refuse to supply goods at any time where:

- (a) Goods are unavailable for any reason whatsoever;
- (b) An order in the proper form has not been received by SEQ LANDSCAPE SUPPLIES PTY LTD;
- (c) If an order is made pursuant to a quotation, the quotation is more than two months old;
- (d) Where the Purchaser has not complied with its obligations under any contract; or
- (e) There is a dispute in relation to a contract with the Purchaser.

- 2.4 An order by the Purchaser for the supply of goods shall:
- (a) identify goods ordered;
  - (b) identify any quotation pursuant to which the order is made;
  - (c) shall specify the preferred date of delivery;
  - (d) be subject to these terms and conditions; and
  - (e) shall be accompanied by an specifications in accordance with which the goods are to be supplied.
- 2.5 Any variation of contract or cancellation of an order will not be effective unless agreed in writing by SEQ LANDSCAPE SUPPLIES PTY LTD.
- 2.6 The description of goods shall not be an essential term of the contract.
- 2.7 SEQ LANDSCAPE SUPPLIES PTY LTD has provided the goods on the specifications, drawings and other particulars supplied by the purchaser. Should there be any change in the quantities required because the purchaser agrees and should there be a change and the purchaser cannot obtain matching goods, being aware that the goods provided by SEQ LANDSCAPE SUPPLIES PTY LTD are unique, then the purchaser will not hold SEQ LANDSCAPE SUPPLIES PTY LTD liable for any additional goods not matching the goods the subject of this contract.

### 3. The Goods

(a)The goods are products of nature and are subject to variations in colour, internal markings and physical properties and the goods are sold subject to the condition that the purchaser will accept the goods containing the range of colour and textural markings common to stone and natural products including natural defects which could reasonably be expected in the product type and grade of material purchased.

(b)All goods sold directly from the quarry, without any additional factory processing, are deemed to be of a "Quarry Run" nature, and can reasonably be expected to exhibit natural defects. Such goods will be deemed to have been accepted by the customer on selection, or on issue of a purchase order (whichever occurs first), and no warranty (whether written or implied) is given except in the case where any warranty cannot be excluded as a matter of law.

(c)SEQ LANDSCAPE SUPPLIES PTY LTD does not recommend the use of sandstone products in any environment where the goods are subject to chemical exposure or installed in adjacent areas. This includes, but is not limited to, swimming pool chemicals. Any such installation is done at the customers own risk.

### 4. Price

The price of the goods shall be the sum of:

- (a) the price of the goods as quoted by SEQ LANDSCAPE SUPPLIES PTY LTD;
- (b) the price of any additional goods requested or accepted by the Purchaser;
- (c) **GST**, taxes and statutory charges, storage and delivery charges in relation to the goods;
- (d) the cost of any variation to the contract which has been agreed to by SEQ LANDSCAPE SUPPLIES PTY LTD;
- (e) any increases in material, labour, freight or cartage costs occurring after the date of the quotation.

Any prices quoted will not include sales tax unless specified.

## 5. Payment

- 5.1 Payment is made when cash is received or, direct bank transfer is received into the bank account of SEQ LANDSCAPE SUPPLIES PTY LTD or, if payment is by bank cheque, when the cheque is cleared into the bank account of SEQ LANDSCAPE SUPPLIES PTY LTD.
- 5.2 Subject to sub-clauses 5.3 and any express written agreement to the contrary, all goods shall be paid for before delivery, irrespective of whether the delivery is of part or all of a contract.
- 5.3 SEQ LANDSCAPE SUPPLIES PTY LTD may in its discretion agree to supply goods on credit to the Purchaser. In this case:
- (a) payment for goods is to be made within 30 days of the date of Invoice or within such other time period as noted on the invoice;
  - (b) amounts owing by the Purchaser to SEQ LANDSCAPE SUPPLIES PTY LTD at any time should not exceed a limit, to be notified by SEQ LANDSCAPE SUPPLIES PTY LTD to the Purchaser in writing; Purchaser must maintain account within set limit and set term in order to continue trade
  - (c) interest shall be payable on overdue amounts at a rate of 2.5% per month; and
  - (d) SEQ LANDSCAPE SUPPLIES PTY LTD may at any time by written notice (except where default is made, where no notice is required) withdraw or vary credit terms.

## 6. Delivery

- 6.1 If agreed by SEQ LANDSCAPE SUPPLIES PTY LTD, it shall deliver the goods to an address specified by the Purchaser. In such case:
- (a) the Purchaser shall pay all charges associated with delivery;
  - (b) the Purchaser shall be present at the agreed place and time for delivery. If not present SEQ LANDSCAPE SUPPLIES PTY LTD may unload the goods at that place, in which case it would not be responsible in any way for the goods; and
  - (c) SEQ LANDSCAPE SUPPLIES PTY LTDs responsibility for delivery ceases at the front entrance of the delivery address. SEQ LANDSCAPE SUPPLIES PTY LTD shall not be in any way responsible in relation to any delivery requested requiring movement from the front entrance of the delivery address.
  - (d) the purchaser accepts all responsibility for any damage to public or private property and/or costs associated in recovery or repair to SEQ LANDSCAPE SUPPLIES PTY LTD's trucks if the purchaser requires the place of delivery to be beyond the front entrance of the proposed delivery address.
- 6.2 The date of delivery shall be the date delivery is made or first attempted by SEQ LANDSCAPE SUPPLIES PTY LTD. Otherwise the date of delivery shall be the earlier of:
- (a) the date the goods are actually collected by or on behalf of the Purchaser; and
  - (b) the due date for delivery in accordance with the date nominated in the contract.
- 6.3 In the event that a delivery date is nominated by the Purchaser, SEQ LANDSCAPE SUPPLIES PTY LTD shall take reasonable steps to achieve delivery on or about that date. However, no promise is given that the goods will be available on that date, notwithstanding any purported term to that effect in the contract and SEQ LANDSCAPE SUPPLIES PTY LTD shall not be liable for loss (including consequential loss) for failure or delay in delivery due to any cause beyond SEQ LANDSCAPE SUPPLIES PTY LTDs control. In any case SEQ LANDSCAPE SUPPLIES PTY LTD shall not be liable for any amount payable by

the Purchaser in relation to an agreement with a third party as a result of a failure or delay in delivery by SEQ LANDSCAPE SUPPLIES PTY LTD due to any cause whatsoever.

- 6.4 the purchaser accepts full responsibility the unloading of the goods and unless previously agreed in writing by SEQ LANDSCAPE SUPPLIES PTY LTD accepts that all goods can and will be unloaded by means of tipping directly out of the truck and trailer bodies.

## **7. Property and Risk**

- 7.1 The risk in the goods shall pass to the Purchaser upon loading the goods onto the delivery vehicle ready to be transported. The Purchaser shall ensure the goods are adequately insured for loss or damage from this time.

- 7.2 Notwithstanding the passing of risk all goods delivered by SEQ LANDSCAPE SUPPLIES PTY LTD to the Purchaser remain the property of SEQ LANDSCAPE SUPPLIES PTY LTD until all goods supplied by SEQ LANDSCAPE SUPPLIES PTY LTD to the Purchaser have been paid in full, and all other indebtedness of the Purchaser to SEQ LANDSCAPE SUPPLIES PTY LTD on any account whatsoever has been satisfied. Until that time the Purchaser may sell them in the ordinary course of its business as agent for SEQ LANDSCAPE SUPPLIES PTY LTD, and the proceeds shall be held in trust for and as the property of SEQ LANDSCAPE SUPPLIES PTY LTD. Prior to any such sale, the Purchaser shall hold possession of the goods for and on behalf of and as bailee for SEQ LANDSCAPE SUPPLIES PTY LTD and not on its own behalf, and shall return the goods to SEQ LANDSCAPE SUPPLIES PTY LTD on demand. The Purchaser shall separately store the goods until title in them has passed, but if the goods are incorporated into other goods then those other goods shall (wherever possible) be held by the Purchaser on trust for SEQ LANDSCAPE SUPPLIES PTY LTD until payment has been received by SEQ LANDSCAPE SUPPLIES PTY LTD.

- 7.3 If the purchaser chooses not to inspect the goods, the purchaser is deemed to have accepted them.

## **8. Warranties**

- 8.1 SEQ LANDSCAPE SUPPLIES PTY LTD gives no warranty that the goods supplied are sufficient or adequate for the Purchasers purpose. Any advice, information or service provided by SEQ LANDSCAPE SUPPLIES PTY LTD is given in good faith and without liability or responsibility whatsoever on the part of SEQ LANDSCAPE SUPPLIES PTY LTD. The Purchaser acknowledges that in the choice of the goods and the assessment of their suitability for the purposes required it has relied entirely upon its own knowledge skill and judgment and has not relied upon the skill and judgment of SEQ LANDSCAPE SUPPLIES PTY LTD nor upon any promise or representation made or allegedly made by SEQ LANDSCAPE SUPPLIES PTY LTD.

- 8.2 SEQ LANDSCAPE SUPPLIES PTY LTD will not be liable for physical or financial injury, loss or consequential loss or damage arising out of the supply, layout, assembly, insulation or function of the goods.

## **9. Caring**

The Purchaser acknowledges that SEQ LANDSCAPE SUPPLIES PTY LTD will not be liable for a failure of the Purchaser to comply with this clause and indemnifies SEQ LANDSCAPE SUPPLIES PTY LTD against any liability SEQ LANDSCAPE SUPPLIES PTY LTD may incur as a result of any subsequent Purchaser/s failure to properly care for their goods.

## **10. Liability**

- 10.1 Upon delivery the Purchaser shall check the quantity and description of the goods delivered against the quantity and description set out in the documents provided by SEQ LANDSCAPE SUPPLIES PTY LTD and the condition of the goods generally. The Purchaser shall forthwith upon delivery carry out any stipulated or agreed tests or any checks or tests that prudent Purchaser would carry out.

- 10.2 Within **seven (7)** working day from delivery the Purchaser shall give written notice to SEQ LANDSCAPE SUPPLIES PTY LTD of any alleged deficiency or irregularity in quantity or description, or of any faulty condition. Should that notice not be given within that time the goods actually delivered shall be deemed to be strictly in accordance with the contract as to:
- (a) description and quantity; and
  - (b) suitability, merchantability and compliance with specifications and standards, and the Purchaser shall lose any right (or alleged right) to reject the goods or claim any remedy whatsoever (including damages) against SEQ LANDSCAPE SUPPLIES PTY LTD in relation to any of the above, and the Purchaser will indemnify SEQ LANDSCAPE SUPPLIES PTY LTD against any claim made by any person arising out of the supply by SEQ LANDSCAPE SUPPLIES PTY LTD to the Purchaser of goods, accepted under this clause.
- 10.3 Any liability of SEQ LANDSCAPE SUPPLIES PTY LTD with respect to goods shall arise in accordance with these terms and conditions only and shall be limited to:
- (a) replacement of the goods;
  - (b) repair of the goods;
  - (c) payment to the Purchaser of the cost of replacement; or
  - (d) payment to the Purchaser of the cost of having the goods repaired (as SEQ LANDSCAPE SUPPLIES PTY LTD may choose) and in particular SEQ LANDSCAPE SUPPLIES PTY LTD shall not in any event be liable for any consequential loss whatsoever.
- 10.4 The Purchaser shall not be entitled to make any claim against SEQ LANDSCAPE SUPPLIES PTY LTD unless no amounts are outstanding from the Purchaser to SEQ LANDSCAPE SUPPLIES PTY LTD.
- 11. Default**
- 11.1 In the event that the Purchaser fails or neglects to pay SEQ LANDSCAPE SUPPLIES PTY LTD for the goods in accordance with the terms hereof, or is otherwise in default of performance of a contract, or threatens to become or is in danger of becoming subject to any insolvency administration, or ceases or threatens to cease to conduct its business in the normal manner then:
- (a) the full price of the goods and all other amounts payable to SEQ LANDSCAPE SUPPLIES PTY LTD shall immediately become due and owing to SEQ LANDSCAPE SUPPLIES PTY LTD and payable upon demand;
  - (b) SEQ LANDSCAPE SUPPLIES PTY LTD may, without notice, enter onto the premises where the goods are to recover possession of the goods; and
  - (c) SEQ LANDSCAPE SUPPLIES PTY LTD may suspend all further performance of any or all of its obligations under any contract or terminate any contract with the Purchaser or a related corporation of the Purchaser until the default is rectified.
- 11.2 The Purchaser shall pay all expenses of collection by SEQ LANDSCAPE SUPPLIES PTY LTD of overdue moneys and enforcement of a contract on a solicitor and client basis.
- 11.3 Interest shall be payable on all amounts overdue to SEQ LANDSCAPE SUPPLIES PTY LTD for whatever reason at a rate of 2% per month.

## 12. Indemnity

12.1 Where goods are supplied to a Purchaser's specific instructions or design the Purchaser fully indemnifies SEQ LANDSCAPE SUPPLIES PTY LTD against any and all losses it may suffer or incur or become liable for as a result in any way of:

- (a) any defect or error in the Purchaser's instructions or design; and
- (b) any action or demand brought against SEQ LANDSCAPE SUPPLIES PTY LTD in respect of any infringement or alleged infringement of an intellectual property right; and the Purchaser warrants that any instructions or design given by it shall not be defective or erroneous in any manner, and shall not cause SEQ LANDSCAPE SUPPLIES PTY LTD to infringe any intellectual property right.

The Purchaser, and (where the Purchaser is unincorporated) each proprietor of the Purchaser hereby charges with payment of the moneys and compliance of all obligations owed by the Purchaser to SEQ LANDSCAPE SUPPLIES PTY LTD or beneficial interest (freehold and leasehold) in land and personal property held now and in the future by that Purchaser or proprietor. The Purchaser and, where applicable, each proprietor agrees that if demand is made upon it, him or her by SEQ LANDSCAPE SUPPLIES PTY LTD, the Purchaser or, if applicable, the proprietor will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by SEQ LANDSCAPE SUPPLIES PTY LTD, and against the event that it, he or she fails to do so within a reasonable time of being so requested, the Purchaser or, if applicable, that proprietor irrevocably and by way of security appoints any credit manager or solicitor engaged by SEQ LANDSCAPE SUPPLIES PTY LTD to be its, his or her true and lawful attorney to execute and register such instruments.

13 I acknowledge that I have been advised to seek independent legal advice and further acknowledge that I have read the contents of this application for commercial credit and understand fully its terms and conditions.

## 14. General

14.1 No waiver of a term or provision of this agreement shall be construed as a further or continuing waiver of the term or provision.

14.2 In the event that any term or provision or part thereof cannot be given effect for any reason then the term or provision or part thereof which cannot be given effect shall be severed and read down restrictively and the remaining terms and provisions shall remain valid and binding on the parties.

14.3 As far as the obligations of the Purchaser are concerned, time is of the essence.

14.4 Where SEQ LANDSCAPE SUPPLIES PTY LTD's performance of a contract is to be by instalments, then the part of the contract as relates to one instalment shall be severable from other parts of the contract.

14.5 A contract shall be governed by the law of the State of Queensland irrespective of the place of delivery.

14.6 Any contract shall not be a contract of sale by sample as the purchaser acknowledges that there are variations in the goods and they may vary from sample to sample.

14.7 SEQ LANDSCAPE SUPPLIES PTY LTD reserves the right to review these terms and conditions at any time. If following any such review there is to be any change to these terms and conditions, then that change will take effect from that date on which SEQ LANDSCAPE SUPPLIES PTY LTD notifies the client of such change.

14.8 Neither party shall be liable for any default due to an Act of God, war, terrorism, strike, lock out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

14.9 The terms and Conditions set out herein shall prevail over terms and conditions set out in any document used by the client, the owner or any other person having interest in the goods and purporting to have a contractual effect.



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14.10 The failure by SEQ LANDSCAPE SUPPLIES PTY LTD to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SEQ LANDSCAPE SUPPLIES PTY LTD's right to subsequently enforce that provision.

14.11 If any provision of these terms and conditions are inconsistent with the PPSA (Personal Property Securities Act), the PPSA shall prevail to the extent of the inconsistency.

I acknowledge that I have been advised to seek independent legal advice and further acknowledge that I have read the contents of this Terms and Conditions of Sale and agree with all Terms and Conditions.