

  
**STRATA STONES LIMITED**  
**TERMS AND CONDITIONS OF SALE**  
**(2010-2011)**

1	<b>DEFINITIONS AND INTERPRETATION</b>	2	<b>APPLICATION OF CONDITIONS AND ORDERING OF GOODS</b>	5.3	Payment of Goods supplied on a credit account shall be due and payable not later than 30 days from the date of the invoice. If the Customer defaults in making payment the entire balance of the account shall be payable forthwith and the Company shall be entitled to charge interest at a rate of 4% per annum above the base rate of the Bank of England, such interest to accrue on a daily basis from the due date until payment is made in full.
1.1	In this document the following words and expressions shall have the following meanings:-	2.1	These Conditions will apply to the Contract to the exclusion of all other terms and conditions including, without limitation, any terms or conditions which the Customer otherwise purports to apply to an Order, whether presented by the Customer to the Company or otherwise.	5.4	The Company reserves the right to reject and return any payments made by the Customer via a third party's bank account and to insist that all payments made by the Customer are made from the Customer's own bank account and not via a third party's bank account.
	"Company" means [Strata Stones Limited, a company registered in England and Wales with number 05219395 and having its registered office at 32 Queen Anne Street, London W1G 8HD	2.2	No previous correspondence or writings (including, without limitation, faxes or verbal communications and emails) between the Company and the Customer regarding the Goods or terms or conditions contained in or delivered with an Order, confirmation of Order or other document will form part of the Contract unless expressly agreed by the Company in writing.	5.5	No payment shall be deemed to have been received until the Company has received the full amount due in cleared funds.
	"Customer" means the person or persons, firm or firms, company or companies from whom an Order is received and accepted by the Company;	2.3	Each Order will be deemed to be an offer by the Customer to purchase the Goods subject to these Conditions and will only be accepted by the Company subject to these Conditions to the exclusion of all other terms and conditions.	5.6	Notwithstanding any other provision of these Conditions, all payments payable to the Company under the Contract shall become due immediately on its termination.
	"Conditions" means the conditions of sale contained in this document and "Condition" will be construed accordingly;	2.4	No Contract may be cancelled by the Customer after it is accepted by the Customer except with the agreement in writing of the Company.	5.7	If the Customer fails to pay any invoice in full on or before the due date for payment then, without prejudice to any other right or remedy available to the Company, the Company, at its option, will be entitled to:
	"Contract" means a contract between the Company and the Customer for the sale of Goods by the Company to the Customer constituted by the acceptance by the Company of an Order;	<b>3</b>	<b>SPECIFICATION OF GOODS</b>	5.7.1	cancel the Contract or cancel or suspend any further deliveries of Goods or other goods supplied to the Customer under any other Contract which is outstanding or unfulfilled at the due date for payment;
	"Delivery" means delivery of Goods to the Customer in accordance with Condition 6;	3.1	All Goods shall be required only to conform to the Specification. No description, specification or illustration contained in any Company product pamphlet or other sales or marketing literature and no representation (whether written or oral), correspondence or statement shall form part of the Contract. The Customer agrees that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.]	5.7.2	set-off any sums owed by the Company to the Customer against payment of the overdue invoice by the Customer; or
	"Delivery Date" means the date specified by the Company for Delivery;	3.2	Except to the extent of the Company's obligation in Condition 3.1, the Customer assumes the responsibility for the quality of the Goods on Delivery.	5.7.3	charge the Customer interest on the unpaid amount at a rate of 4% per annum above the base rate of the Bank of England, such interest to accrue on a daily basis (both before and after any judgement or order of a court) from the due date until payment is made in full.
	"Goods" means any goods (or any part or parts of them) specified in the Contract to be supplied to the Customer by the Company;	3.3	It is the Customer's responsibility to check that all the details relating to the Order are correct and to provide the Company with all relevant information relating to the environment in which the Goods are to be used and for their Delivery;	<b>6</b>	<b>DELIVERY</b>
	"Order" means any order made by the Customer for the purchase of Goods from the Company;	3.4	It is important that the Customer checks the measurements carefully. An order should always include an additional quantity to allow for wastage to cover cutting, minor imperfections, as could be expected with the type of stone and finish ordered, and breakage. If the Customer does not order enough, subsequent Goods (as they are a naturally occurring product) may not be exactly the same as the original Goods;	6.1	Delivery will occur when the Goods are ready for unloading at the Delivery address, or when the Customer takes possession of the Goods at the Company's premises whichever is earlier.
	"Price" means the price of the Goods to be paid by the Customer as determined in accordance with Condition 4;	4	<b>PRICE</b>	6.2	The Delivery Date or any other date or time for Delivery specified by the Company shall be an estimate only. Time for Delivery shall not be of the essence of the Contract. Accordingly, the Company shall have no liability to the Customer for any loss or damage arising (directly or indirectly) from any delay in Delivery however such delay is caused (including, without limitation, by the negligence of the Company or its employees, contractors or agents) nor shall the Customer be entitled to terminate or rescind the Contract or refuse to accept Delivery because of such a delay.
	"Price List" means the Company's price list for the Goods from time to time as notified to the Customer; and	4.1	The Price will be as specified in the Contract or otherwise agreed in writing by the Company and Customer or of no such agreement has been made, as specified in the then current Price List at the date of acceptance of the Order.	6.3	The Customer will inspect the Goods at its earliest opportunity after Delivery. Any claims by the Customer in respect of any damage to or shortage or loss of the Goods must be notified in writing to the Company within 2 working days from the date of delivery and the Company (and any carrier) must be given a fair chance to inspect the Goods. The Company will not accept liability for shortages in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the goods within 2 working days of the delivery. In such circumstances the Company's liability will be limited to making the shortage good
	"Specification" means specification for the Goods provided by the Company to the Customer forming part of the Contract or otherwise agreed by the Company and Customer in writing.	4.2	The Company may withdraw or amend any quotation at any time prior to the acceptance of the Order. Acceptance of the Order will occur when the Company issue a written acknowledgement or when the Company begins to process the Order, whichever is the earlier.	6.4	If the Customer does not accept Delivery in accordance with the Contract, the Company shall be entitled to immediate payment in full for the goods so tendered. The Company will arrange for the Goods to be placed in storage at the Customer's risk and expense until such time as the Goods are Delivered.
1.2	Save to the extent that the context or the express provisions of these Conditions require otherwise, in these Conditions:-	4.3	The Price and all prices quoted are exclusive of VAT or any other sales tax or customs duties applicable to the supply of the Goods to the Customer or any costs or charges relating to freight, carriage and insurance, all of which will be invoiced to the Customer at the rate applicable at the date of the invoice.	6.5	Delivery may be made by the Company in separate consignments. Each separate consignment of Goods shall be invoiced and paid for in accordance with the provisions of the Contract. Where Delivery is made in separate consignments, failure by the Company to deliver one or more of the consignments in accordance with the Contract or any claim by the Customer in respect of any of those consignments will not entitle the Customer to repudiate or cancel the Contract or any other consignment of the Goods.
	(a) words importing the singular shall include the plural and <i>vice versa</i> ;	<b>5</b>	<b>PAYMENT</b>	<b>7</b>	<b>NON-CONFORMING GOODS</b>
	(b) words importing any gender shall include all other genders;	5.1	The Company will be entitled to invoice the Customer for the Price and any other sums due in respect of the Goods on or at any time after Delivery and, unless otherwise agreed by the Company in writing, the Customer will pay the invoice in full within the credit terms agreed and confirmed in writing by the Company or in the absence of any credit terms within fourteen (14) days after the date of invoice. Time for payment shall be of the essence of the Contract.	7.1	Subject always to the remaining provisions of this Condition 7, if the Goods are found by the Customer not to conform to the Specification and notice of such non-conformance is given to the Company in accordance with Condition 6.3 and the Goods are accepted as not conforming to the Specification by the Company having been given a reasonable opportunity to examine the Goods after receiving notice of the non-conformity from the Customer, the Company will, at its option, replace the non-conforming Goods free of charge or refund the Price (pro-rata) paid by the Customer for the non-conforming Goods and subject to Clause 9.3 the Company shall have no further liability to the Customer or any third party in respect of any claims, losses, liabilities, expenses or damages arising from any non-conformities in such Goods.
	(c) references to these Conditions or any other document shall be construed as references to these Conditions or that document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;	5.2	If the Company agrees any credit terms with the Customer in respect of the payment of Goods, the Company reserves the right at any time to withdraw or vary such credit terms in respect of further consignments of Goods without explanation.		
	(d) references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;				
	(e) references to a "person" includes any individual firm, company, corporation, body corporate, government, state or agency of a state, trust or foundation, or any unincorporated body, association or partnership (whether or not having separate legal personality) of two or more of the foregoing;				
	(f) references to "written" or "in writing" will include email communications; and				
	(g) reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing is deemed, in respect of any jurisdiction other than England, to include that which most approximates in that jurisdiction to the English legal term.				
1.3	The headings to Conditions are inserted for convenience only and shall not affect the interpretation or construction of these Conditions.				



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7.2	The obligations of the Company contained in Condition 7.1 shall be conditional upon:-	8.4	The Customer hereby grants the Company and its employees and agents an irrevocable licence at any time to enter any premises where the Goods are or may be stored following Delivery and prior to ownership of the Goods passing to the Customer for the purpose of inspecting the Goods or, where the Customer's right to possess the Goods has terminated, for the purpose of recovering the Goods.	11.2	Where the Customer is a "consumer" under a "distance contract", both as defined in the Consumer Protection (Distance Selling) Regulations 2000, the Customer may cancel the order within 7 working days after the day after the goods are delivered. The Customer must then either return the goods to the branch from which they were delivered or request the Company to collect the goods; in the later case the Customer will be liable to pay the Company's costs of collection.
	(a) the defect not having arisen because the Customer failed to follow the Company's oral or written instructions or good trade practice as to the storage, installation, commissioning, use or maintenance of the Goods;	8.5	The Customer shall not be entitled to encumber or in any way charge any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) become due and payable with immediate effect.	11.3	The Customer will not have a right of cancellation where the goods are made to the Customer's specification or are personalised or are liable to deteriorate.
	(b) the product not being installed after defects have been found. Under no circumstances will the Company be liable for any additional cost of installation of the products and the products cannot be replaced or accepted back if they have already been used or installed;	8.6	The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.	12	<b>FORCE MAJEURE</b>
	(c) the defect not having arisen due to the Customer's negligence or breach of the Contract; and	8.7	On any termination or rescission of the Contract, the Company's rights under this Condition 8 will survive and remain in full force and effect.	12.1	If the Company is prevented from or delayed in performing the Contract by any circumstances or conditions beyond the control of the Company (including, without limitation, any war, national emergency, act of terrorism, industrial dispute, lockout, strike or other labour dispute (whether or not relating to either party's workforce), riot, civil commotion, malicious damage, fire, explosion, storm, flood, drought, epidemic or pandemic, Act of God, accident, failure of production equipment, any restraint or delay affecting carriers or inability to obtain supplies of adequate or suitable materials, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority) then the Company shall have the right to suspend performance of the Contract until such time as those circumstances or conditions are no longer present.
	(d) the Customer making no further use of such Goods after giving such notice.	9	<b>LIMITATION OF LIABILITY</b>	13	<b>GENERAL CONDITIONS</b>
7.3	Due to the nature of the product, natural stone paving and other products may be subject to variation in colour. The photos in the brochure and samples had at the Company's stockist show general characteristics of colour and markings which may differ from the actual products delivered. Choice of product should always be made from actual products rather than the photographs in the brochure. The Company will not be held responsible nor admit liability for the colour and markings variation.	9.1	Subject to Conditions 6.2, 6.3 and 7.1, the following provisions of this Condition 9 set out the entire financial liability of the Company (including, without limitation, any liability for the acts or omissions of its employees, agents or sub-contractors) to the Customer in respect of: (a) any breach of these Conditions; (b) any use or resale by the Customer of any of the Goods or of any product incorporating the Goods; and (c) any representation, statement or act or omission (including any negligent act or omission) under or in connection with the Contract.	13.1	Any notice or communication to be given under, or in connection with the matters contemplated by, these Conditions shall be in writing and signed by or on behalf of the party giving it and shall be addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice or communication.
7.4	Due to the nature of the product, natural stone paving and other products sizes and dimensions stated are approximate and may differ from the actual products delivered. The thickness variation is due to the splitting of the stone along the naturally formed seams of the block extracted from the quarry. The Company will not be held responsible nor admit liability for the size and dimension variation.	9.2	All warranties, conditions and other terms implied by statute or common law (except the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract and in particular, but without limiting the foregoing generally, the Company grants no warranties regarding fitness for purpose, use, quality or nature of the Goods whether express or implied by statute or common law.	13.2	No failure or delay by either party to exercise any right or remedy provided under these Conditions is to constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy is to preclude or restrict the further exercise of that (or any other) right or remedy.
7.5	Any Goods to be repaired or replaced in accordance with Condition 7.1 shall be delivered to the Company at the Company's expense.	9.3	Nothing in these Conditions shall be construed so as to limit or exclude the liability of the Company: (a) for fraud or fraudulent misrepresentation; (b) for death or personal injury arising as a result of the Company's negligence, or those of its employees or agents; or (c) any other liability that may not be excluded or limited by law.	13.3	No amendment or variation of these Conditions or any Order is effective unless it is in writing and signed by or on behalf of each of the Company and the Customer.
7.6	The Company shall be under no liability in respect of the Goods if the Price for those Goods has not been paid in full by the due date of payment.	9.4	Subject to Conditions 9.2 and 9.3:	13.4	If any provision of these Conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, that does not affect: (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or (ii) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.
7.7	The Company will not accept the return of Goods from the Customer (other than in accordance with Condition 7.1) unless:	9.4.1	the Company will not have any liability to the Customer for any indirect or consequential loss, loss of profit or anticipated profit, loss of business, loss of opportunity, loss of or damage to goodwill or reputation or any additional operational, administrative costs, expenses or charges (whether or not notice of the likelihood of such damage is given to the Company) arising in any way under or in connection with the Contract (including, without limitation, as a result of breach of contract, negligence or breach of statutory duty); and	13.5	The Company and the Customer each enters into the Contract for its own benefit and not for the benefit of any third party and no third party will have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of the Contract.
7.7.1	by prior arrangement (confirmed by the Company in writing);	9.4.2	the Company's total liability arising in any way under or in connection with the Contract (including, without limitation, as a result of breach of contract, negligence or breach of statutory duty) will be limited to the Price.	13.6	The Company may assign, transfer or otherwise delegate the Contract or any of its rights or obligations under the Contract to any third party. The Customer will not be entitled to assign, transfer or otherwise delegate the Contract or any of its rights or obligations under the Contract to any third party without the prior written approval of the Company.
7.7.2	on payment of an agreed handling charge (unless the Goods are agreed by the Company to be defective on Delivery);	10	<b>INSOLVENCY OF THE CUSTOMER</b>	13.7	On the opening of a credit account or the commencement of trading, whichever the earliest, all Strata Stones Limited account holders accept in advance the Company's Terms and Conditions of sale.
7.7.3	the Goods are as fit for sale on their return as they were on Delivery; and	10.1	In the event that: (a) the Customer ceases to trade or carry on business or becomes unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986; or (b) an order is made or a resolution is passed for the winding up of the Customer; or (c) an order is made for the appointment of an administrator of the Customer; or (d) an administrator of the Customer is appointed or notice of intention to appoint such an administrator is given by the Customer or its directors or any other person; or (e) a receiver or manager or administrative receiver is appointed in respect of all or any of the Customer's assets or undertaking; or (f) circumstances arise which entitle the court to make a winding-up order in respect of the Customer; or (g) the Customer takes or suffers any similar or analogous action in consequence of debt; or (h) the Customer proposes a voluntary arrangement or any composition, compromise or arrangement with its creditors; or (i) any event analogous to any of the foregoing occurs in respect of the Customer in any jurisdiction, all sums outstanding under any Contract will immediately become payable to the Company and (without prejudice to any other rights or remedies) the Company may suspend performance of or terminate the Contract without any liability on its part and exercise its rights pursuant to Condition 8.3.1 or Condition 8.4.	13.8	If these Conditions are translated for any purpose, the English language version will be controlling and will prevail in all respects including, without limitation, in the event of inconsistency of terms.
7.7.4	where requested by the Company, a sample of the Goods to be returned is provided to the Company for inspection and testing.	11	<b>Order Cancellation</b>	13.9	These Conditions and any Contract shall be governed by and construed in accordance with the laws of England, Scotland, Ireland and Wales. Disputes arising here shall be exclusively subject to the jurisdiction of these Courts.
8	<b>TITLE AND RISK</b>	11.1	The Company may in its sole discretion accept or reject the cancellation of any order after it has accepted such order. The Company will not accept the cancellation of an order for goods which are to be specially made or obtained after the Company has accepted such an Order nor will any allowance be made in respect of such goods where they are subsequently returned.		
8.1	All risk of loss or deterioration of or damage to the Goods shall pass to the Customer upon Delivery and following Delivery, all such risk (however caused) will pass to the Customer notwithstanding that insurance may have been obtained by the Company on the Customer's behalf in respect of the Goods during their carriage.				
8.2	Unless otherwise agreed in writing between the Company and the Customer, ownership of the Goods (or any consignment of the Goods) will remain with the Company and will not pass to the Customer until the whole of the Price and all other sums due to the Company by the Customer in respect of the Goods (or the consignment of the Goods) has been paid in full by the Customer.				
8.3	Following Delivery and until ownership of the Goods passes to the Customer, the Customer will:				
8.3.1	deliver up the Goods to the Company at any time the Company may require;				
8.3.2	store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;				
8.3.3	not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and				
8.3.4	maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.				