

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “B & H Stone” means A Broadbent & M J Broadbent (In Partnership) T/A B & H Stone, its successors and assigns or any person acting on behalf of and with the authority of A Broadbent & M J Broadbent (In Partnership) T/A B & H Stone.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting B & H Stone to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by B & H Stone to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between B & H Stone and the Client in accordance with clause 5 below.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with B & H Stone and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Clients credit limit and/or the account exceeds the payment terms, B & H Stone reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW) and section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that B & H Stone shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by B & H Stone in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by B & H Stone in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of B & H Stone; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give B & H Stone not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by B & H Stone as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At B & H Stone’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by B & H Stone to the Client in respect of Works performed or Materials supplied; or
 - (b) B & H Stone’s quoted Price (subject to clause 5.2) which shall be binding upon B & H Stone provided that the Client shall accept B & H Stone’s quotation in writing within thirty (30) days.
- 5.2 B & H Stone reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to limitations to site accessibility, safety considerations, prerequisite work by any third party not being completed, change of design, etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to B & H Stone in the cost of labour or Materials which are beyond B & H Stone’s control.

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- 5.3 Variations will be charged for on the basis of B & H Stone's quotation, and will be detailed in writing, and shown as variations on B & H Stone's invoice. The Client shall be required to respond to any variation submitted by B & H Stone within ten (10) working days. Failure to do so will entitle B & H Stone to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At B & H Stone's sole discretion a non-refundable deposit of forty (40%) percent of the price may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by B & H Stone, which may be:
- (a) on completion of the Works; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by B & H Stone.
- 5.6 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and B & H Stone.
- 5.7 B & H Stone may in its discretion allocate any payment received from the Client towards any invoice that B & H Stone determines and may do so at the time of receipt or at any time afterwards. On any default by the Client B & H Stone may re-allocate any payments previously received and allocated. In the absence of any payment allocation by B & H Stone, payment will be deemed to be allocated in such manner as preserves the maximum value of B & H Stone's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by B & H Stone nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to B & H Stone an amount equal to any GST B & H Stone must pay for any supply by B & H Stone under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Provision of the Works

- 6.1 Subject to clause 6.2 it is B & H Stone's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that B & H Stone claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond B & H Stone's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify B & H Stone that the site is ready.
- 6.3 At B & H Stone's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.4 B & H Stone may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by B & H Stone for delivery of the Works is an estimate only and B & H Stone will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that B & H Stone is unable to supply the Works as agreed solely due to any action or inaction of the Client, then B & H Stone shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7. Risk

- 7.1 If B & H Stone retains ownership of the Materials under clause 12 then:
- (a) where B & H Stone is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at B & H Stone's address; or
 - (ii) the Materials are delivered by B & H Stone or B & H Stone's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where B & H Stone is to both supply and install Materials then B & H Stone shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests B & H Stone to leave Materials outside B & H Stone's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 Where B & H Stone is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and B & H Stone shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.4 The Client acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by B & H Stone to match colour, shade or grain of product, B & H Stone shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 7.5 Where the Client has supplied materials for B & H Stone to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. B & H Stone shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.6 The Client acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and

- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.

8. Accuracy of Client's Plans and Measurements

- 8.1 B & H Stone shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, B & H Stone accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or B & H Stone places an order based on these measurements and quantities. B & H Stone accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Specifications

- 9.1 The Client acknowledges that:
 - (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in B & H Stone's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by B & H Stone.
- 9.2 The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use.

10. Access

- 10.1 The Client shall ensure that B & H Stone has clear and free access to the work site at all times to enable them to undertake the works. B & H Stone shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of B & H Stone.
- 10.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by B & H Stone.

11. Compliance with Laws

- 11.1 The Client and B & H Stone shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 11.3 The Client agrees that the site will comply with any occupational health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

12. Title

- 12.1 B & H Stone and the Client agree that ownership of the Materials shall not pass until:
 - (a) the Client has paid B & H Stone all amounts owing to B & H Stone; and
 - (b) the Client has met all of its other obligations to B & H Stone.
- 12.2 Receipt by B & H Stone of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to B & H Stone on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for B & H Stone and must pay to B & H Stone the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by B & H Stone shall be sufficient evidence of B & H Stone's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with B & H Stone to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for B & H Stone and must pay or deliver the proceeds to B & H Stone on demand;
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of B & H Stone and must sell, dispose of or return the resulting product to B & H Stone as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises B & H Stone to enter any premises where B & H Stone believes the Materials are kept and recover possession of the Materials;
 - (g) B & H Stone may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of B & H Stone;
 - (i) B & H Stone may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to B & H Stone for Works – that have previously been supplied and that will be supplied in the future by B & H Stone to the Client.
- 13.3 The Client undertakes to:

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- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which B & H Stone may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, B & H Stone for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of B & H Stone;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of B & H Stone;
 - (e) immediately advise B & H Stone of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.4 B & H Stone and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by B & H Stone, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client shall unconditionally ratify any actions taken by B & H Stone under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of B & H Stone agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies B & H Stone from and against all B & H Stone's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising B & H Stone's rights under this clause.
- 14.3 The Client irrevocably appoints B & H Stone and each director of B & H Stone as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within twenty-four (24) hours of delivery notify B & H Stone in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow B & H Stone to inspect the Materials or to review the Works provided.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 B & H Stone acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, B & H Stone makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. B & H Stone's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, B & H Stone's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If B & H Stone is required to replace any Materials under this clause or the CCA, but is unable to do so, B & H Stone may refund any money the Client has paid for the Materials.
- 15.7 If B & H Stone is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then B & H Stone may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 15.8 If the Client is not a consumer within the meaning of the CCA, B & H Stone's liability for any defect or damage in the Materials is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by B & H Stone at B & H Stone's sole discretion;
 - (b) limited to any warranty to which B & H Stone is entitled, if B & H Stone did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 15.1; and
 - (b) B & H Stone has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, B & H Stone shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without B & H Stone's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by B & H Stone;
 - (f) fair wear and tear, any accident, or act of God.

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15.11 Notwithstanding anything contained in this clause if B & H Stone is required by a law to accept a return then B & H Stone will only accept a return on the conditions imposed by that law.

16. Intellectual Property

16.1 Where B & H Stone has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in B & H Stone, and shall only be used by the Client at B & H Stone's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of B & H Stone.

16.2 The Client warrants that all designs, specifications or instructions given to B & H Stone will not cause B & H Stone to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify B & H Stone against any action taken by a third party against B & H Stone in respect of any such infringement.

16.3 The Client agrees that B & H Stone may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which B & H Stone has created for the Client.

17. Default and Consequences of Default

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at B & H Stone's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes B & H Stone any money the Client shall indemnify B & H Stone from and against all costs and disbursements incurred by B & H Stone in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, B & H Stone's contract default fee, and bank dishonour fees).

17.3 Further to any other rights or remedies B & H Stone may have under this Contract, if a Client has made payment to B & H Stone, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by B & H Stone under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

17.4 Without prejudice to B & H Stone's other remedies at law B & H Stone shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to B & H Stone shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to B & H Stone becomes overdue, or in B & H Stone's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by B & H Stone;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

18.1 Without prejudice to any other remedies B & H Stone may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions B & H Stone may suspend or terminate the supply of Works to the Client. B & H Stone will not be liable to the Client for any loss or damage the Client suffers because B & H Stone has exercised its rights under this clause.

18.2 B & H Stone may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice B & H Stone shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to B & H Stone for Works already performed. B & H Stone shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by B & H Stone as a direct result of the cancellation (including, but not limited to, any loss of profits).

18.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Dispute Resolution

19.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. Privacy Policy

20.1 All emails, documents, images or other recorded information held or used by B & H Stone is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. B & H Stone acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). B & H Stone acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by B & H Stone that may result in serious harm to the Client, B & H Stone will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

20.2 Notwithstanding clause 20.1, privacy limitations will extend to B & H Stone in respect of Cookies where transactions for purchases/orders transpire directly from B & H Stone's website. B & H Stone agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

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- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to B & H Stone when B & H Stone sends an email to the Client, so B & H Stone may collect and review that information (“collectively Personal Information”)

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via B & H Stone's website.

- 20.3 The Client agrees for B & H Stone to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by B & H Stone.
- 20.4 The Client agrees that B & H Stone may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.5 The Client consents to B & H Stone being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Client agrees that personal credit information provided may be used and retained by B & H Stone for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 20.7 B & H Stone may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that B & H Stone is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and B & H Stone has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of B & H Stone, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Client shall have the right to request (by e-mail) from B & H Stone:
- (a) a copy of the Personal Information about the Client retained by B & H Stone and the right to request that B & H Stone correct any incorrect Personal Information; and
 - (b) that B & H Stone does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 B & H Stone will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting B & H Stone via e-mail. B & H Stone will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. Unpaid Seller's Rights

- 21.1 Where the Client has left any item with B & H Stone for repair, modification, exchange or for B & H Stone to perform any other service in relation to the item and B & H Stone has not received or been tendered the whole of any monies owing to it by the Client, B & H Stone shall have, until all monies owing to B & H Stone are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of B & H Stone shall continue despite the commencement of proceedings, or judgment for any monies owing to B & H Stone having been obtained against the Client.

22. Other Applicable Legislation

- 22.1 At B & H Stone's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales) and Building Industry Fairness (Security of Payment) Act 2017 of Queensland, may apply.
- 22.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 22.1 each as applicable, except to the extent permitted by the Act where applicable.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not B & H Stone may have notice of the Trust, the Client covenants with B & H Stone as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of B & H Stone (B & H Stone will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which B & H Stone has its principal place of business, and are subject to the jurisdiction of the Ballina Courts in New South Wales.
- 25.3 Subject to clause 15, B & H Stone shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by B & H Stone of these terms and conditions (alternatively B & H Stone's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.4 B & H Stone may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of B & H Stone.
- 25.6 B & H Stone may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of B & H Stone's sub-contractors without the authority of B & H Stone.
- 25.7 The Client agrees that B & H Stone may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for B & H Stone to provide Works to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.