

1. Definitions

“Client”	Means the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
“Contract”	Means the contract constituted pursuant to clause 2 of these Terms & Conditions of Trade
“Guarantor”	Means a person or entity who agrees to be liable for the debts of the Client on a principal debtor basis.
“Goods”	Means Goods supplied by the Seller to the Client and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
“Payment Claim”	A claim made by the Seller for a payment due under this agreement (eg progress payment or final payment).
“Price”	Means the price payable for the Goods and Services as agreed between the Seller and the Client
“Seller”	Means Damir Hakulija trading as ‘ORSM Designs’ or any person acting on behalf of and with the express written authority of Damir Hakulija trading as ‘ORSM DESIGNS’.
“Services”	Means all Services supplied by the Seller to the Client and includes any advice or recommendations
“Site”	Means the location in which the works are to be performed as agreed with the Client for the purposes of the Contract
“Works”	The whole of the work to be performed in accordance with the Contract by the Seller for the Client which shall be handed over to the Client

2. Acceptance

- 2.1 Any instructions received by the Seller from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by the Seller shall constitute acceptance of these terms and conditions.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 2.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.
- 2.5 Goods are supplied by the Seller subject only to these terms and conditions of trade to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 The Client acknowledges that for the commencement of the Services the Client must supply all of the following:
 - (a) Signed acceptance of Seller’s written quote or provision of a Purchase Order or both

- (b) Floor plan and elevations plans or cabinetmaking plans showing all items
 - (c) Make and model of all sinks, hotplates, basins and any other items that require the Seller to do cut outs for.
- 2.7 The Client acknowledges that an inspection of the natural granite, marble or similar, is required prior to commencement of the Services. Although all natural stone tops are pre-sealed offshore and on leaving the factory, the Seller suggests that the Client have the natural stone bench tops professionally sealed after installation.
- 2.8 The Client acknowledges that best efforts will be made to obtain the agreed generic branded appliances or goods, but they may rotate names and brands without notice due to suppliers demand but functionality and colours will remain the same or as close as possible.

3. Price And Payment

- 3.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 4) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days. All quotes allows for one template and one install day. Anything outside this must be stipulated on the quote, otherwise a call back charge fee will be charged at the rate of \$150.00 per hour, calculated from the time the Seller leaves the factory to the time the Seller returns to the factory.
- 3.2 At the Seller's sole discretion a deposit may be required before supply of any Goods or Services under this agreement.
- 3.3 At the Seller's sole discretion, payment will be due either:
- (a) before delivery of the Goods; or
 - (b) upon delivery of the Goods; or
 - (c) by instalments in accordance with a payment schedule as agreed between the Seller and the Client
- 3.4 The Seller may submit a detailed payment claim monthly for Goods supplied or Services performed, or both. The value of Services so performed shall include the reasonable value of variations, whether or not the value of such variations has been finally agreed between the parties, and the value of goods delivered to the site but not installed.
- 3.5 A Payment Claim may only be served within the period worked out under the construction contract or 6 months, whichever is the later.
- 3.6 However, if a Payment Claim relates to a final payment, the claim must be served within the later of:
- a) The period worked out under the construction contract;
 - b) 28 days after the end of the last defects liability period, if any, worked out under the relevant construction contract;
 - c) 6 months after the later of
 - i. Completion of all construction work to be carried out, or
 - ii. Supply of related goods and services.
- 3.7 Time for payment for the Goods or Services will be stated on the invoice. If no time is stated then payment shall be due 1 week following the date of the invoice.
- 3.8 For pre-approved Clients, Payment shall be due thirty (30) days following the date of the invoice. Pre-approval is at the sole discretion of the Seller
- 3.9 Payment must be made by any one of the following methods:

- a) Cash
 - b) Credit card (which may incur a surcharge of up to 2.5% of the Price)
 - c) direct credit
 - d) by any other method as agreed to between the Client and the Seller.
- 3.10 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.11 Late Fees & Finance Charges: If the payment of an invoice is not received by the agreed payment due date (as specified in the relevant quotation), a late fee of 2.5% of the value of the invoice will be charged to the Client. In addition, a finance charge of 1.5% per calendar month (18% per annum) will be charged on balances beyond the established terms.

4. Variations

- 4.1 A Variation may consist of any; change, addition, omission, inclusion, exclusion, modification, alteration, increase, decrease or deletion from the Works or the Work under the Contract. Any variation from the plan of scheduled works or specifications, or both, (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of the Seller)
- 4.2 All variations shall be put in writing, and agreed to in writing by the Seller and the Client before work commences. The only exception is if the work is required urgently and it is not practical to produce a variation document before work commences. The Seller shall use reasonable endeavours to seek approval from the Client prior to carrying out any Services which may constitute Variations to the agreed scope of works.
- 4.3 The Seller reserves the right to change the Price in the event of a Variation to the Seller's quotation.
- 4.4 Variations will be charged for on the basis of the Seller's hourly rate plus GST and will be shown as variations on the invoice.

5. Delivery Of Goods

- 5.1 At the Seller's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at the Seller's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
 - (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 5.2 At the Seller's sole discretion the costs of delivery are:
- (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

- 5.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchase provided that such discrepancy in quantity shall not exceed five percent (5%); and the Price shall be adjusted pro rata to the discrepancy.
- 5.7 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Client indemnifies the Seller for any loss or damage whatsoever due to failure by the Seller to deliver the Goods promptly or at all, where due to circumstances beyond the control of the Seller.

6. Risk

- 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 The Seller shall supply a "Cleaning Maintenance Schedule" on installation of the Goods. The Seller shall not be held liable for damage, should the Client not comply with the Seller's recommendations.

7. Title

- 7.1 The Seller and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 7.2 Receipt by the Seller 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 and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a Bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from

the sale or disposal of the Goods, up to and including the amount the Client owes to the Seller for the Goods, on trust for the Seller; and

(f) the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller; and

(g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and

(h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and Conditions of Trade;

(i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Description and Specifications

8.1 Whilst every effort is made to ensure accuracy, all necessary items like (sinks, tape ware, water purifiers, cook tops, basins etc.) are required to be on site or a copy of the manufacturer's templates for measuring. Client and/or site supervisors are responsible to provide our template with the correct positioning of all items. If we are not able to template 100% of the scope of works, then a call back fee of \$150.00 per hour and a delay in production time will occur.

8.2 The Seller accepts no responsibility should the above fixtures or personal/private property be damaged or stolen from the site after measuring has been taken.

8.3 Once finalisations for all details and templated items are 100% complete for the scope of works in the Quote/purchase order, a production time will be confirmed by the production team. Once in production no changes can be made. After all items have been made our productions team will confirm an installation date.

8.4 Please note that installation of some natural stone or site conditions means that benchtops may have to be glued down to cabinets and cut outs to be done on site. This will cause a fine dust. The Buyer agrees to remove any furniture, furnishings or personal goods from the vicinity of the works and agrees that the Seller shall not be liable for any damage caused to those items through the Buyers failure to comply with this clause.

8.5 The Client acknowledges that it is the responsibility of the Client to have all existing benchtops, sinks, basins, Hotplates removed by licensed tradesmen. The Seller reserves the right to charge the Client for the delay of installation, should the Client not comply with this clause.

8.6 The Seller will "no more gap" the internal of all cabinets that need the stone tops to make them vermin proof, only, as required by the BSA. Any other silicon or caulking is not the responsibility of the Seller.

9. Defects

9.1 The Client shall inspect the Goods on delivery and shall within 2 business days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

9.2 The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

9.3 For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

9.4 Goods will not be accepted for return other than in accordance with 9.1 above.

10. Warranty

10.1 Subject to the conditions of warranty set out in clause 10.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery then the Seller shall either replace or remedy the workmanship at the Seller's sole discretion.

10.2 The conditions applicable to the warranty given by clause 10.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i. failure on the part of the Client to properly maintain any Goods; or
 - ii. failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or
 - iii. any use of any Goods otherwise than for any application specified on a quote or order form; or
 - iv. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - v. fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

10.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

11. Default & Consequences of Default

11.1 A one-time Late Fee Charge of 2.5% will be charged if account payment is not received by the due date once the project is completed. In addition interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 1.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

11.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

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

11.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12. Security And Charge

12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13. Cancellation

13.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage arising from such cancellation.

13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

14. Intellectual Property

14.1 As between the parties, the Company owns all copyright and other intellectual property rights in the Product, the plans and the specifications.

14.2 If the Customer provides any sketch, plan or document, which the Company uses or relies upon and which infringes any third party's copyright, the Customer will indemnify the Company against all liability or loss whatsoever suffered or incurred by the Company.

15. Dispute Resolution

- 15.1 If any party considers that a dispute has arisen in relation to the services or goods supplied under this agreement (Dispute) it may give written notice to the other party setting out the reasonable details of the Dispute (Dispute Notice).
- 15.2 Within 14 days after service of a Dispute Notice, the parties must confer and attempt to resolve the Dispute and failing resolution of the Dispute explore and if possible agree on methods of resolving the Dispute by other means. At any such conference each party must be represented by a person having authority to agree to a resolution of the Dispute.
- 15.3 In the event that the Dispute cannot be so resolved or methods of resolution agreed on, or if at any time either party considers that the other party is not making reasonable efforts to resolve the Dispute, either party may commence court proceedings.
- 15.4 No party may commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with this clause 15. This clause 15 does not affect the right of any party to at any time commence proceedings where the party is seeking urgent interlocutory or declaratory relief or to take any action open to it in relation to a dispute which is not a Dispute.

16. General

- 16.1 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.
- 16.2 The Seller and the Client agree that the terms of this contract shall be governed in accordance with the laws of the state of Queensland, Australia.
- 16.3 Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular.
- 16.4 The Seller shall be under no liability whatsoever to the Client for any indirect loss or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 16.5 The Seller will not be liable for liquidated damages (LD's) unless expressly agreed to in writing by the Seller.
- 16.6 If the Seller agrees in writing to liquidated damages, the extent claimable by the Client under the contract will be limited to 2.5% of the sum of the contract, unless otherwise agreed in writing.
- 16.7 In the event of any breach of this contract by the Seller, the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.8 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 the Seller.
- 16.9 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.10 The Client agrees that the Seller may 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 the date on which the Seller notifies the Client of such change.
- 16.11 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

16.12 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

17. LIMITATION OF LIABILITY

17.1 The Seller's total aggregate liability howsoever arising under or in connection with the Contract will not exceed 100% of the Price as specified in the purchase order provided that such limitation will not apply to any liability if and to the extent that all or part of the amount of such liability is recoverable by the Seller under a policy of insurance maintained by the Seller (or which it should have maintained) in accordance with the minimum requirements of the Contract. The Seller's liability to indemnify the Client is reduced proportionally to the extent that a negligent or unlawful act or omission of the Client contributed to the liability.

17.2 The limitation of the Seller's liability in clause 17 applies regardless of whether such liability arises in contract, tort (including negligence), breach of statutory duty or otherwise at law.

17.3 Nothing in this clause 18 is intended to exclude or limit the Supplier's liability in any manner or to any extent prohibited by law or for any liability in respect of:

- a) death or injury of any person;
- b) damage to property of any person;
- c) any claim made against the Client that goods or services supplied under the contract infringe the intellectual property or other similar rights of a third party;
or
- d) any breach of an obligation of confidentiality under the Contract.

18. Privacy Act 1988

18.1 The Client or the Guarantor, or both, agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor in relation to credit provided by the Seller.

18.2 The Client or the Guarantor, or both, agree that the Seller may exchange information about the Client and the Guarantor with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for one or more of the following purposes:

- (a) to assess an application by Client;
- (b) to notify other credit providers of a default by the Client;
- (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;
- (d) to assess the credit worthiness of the Client or Guarantor, or both.

18.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

18.4 The Client agrees that personal credit information provided may be used and retained by the Seller for any one or more of the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:

- (a) provision of Goods;
- (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods;
- (c) analysing, verifying or checking the Client's credit, payment or status in relation to provision of Goods;

(d) processing of any payment instructions, direct debit facilities or credit facilities, or both, requested by Client;

(e) enabling the daily operation of Client's account or the collection of amounts outstanding in the Client's account in relation to the Goods, or both.

18.5 The Seller may give information about the Client to a credit reporting agency for the purpose of obtaining a consumer credit report about the Client; and/or allowing the credit reporting agency to create or maintain a credit information file containing information about the Client.

19. Legislation

19.1 Except to the extent permitted by law, nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of any relevant Legislation, including; the Building and Construction Industry Payments Act 2004 of Queensland and the Competition and Consumer Act 2010 (Cth).