

# GRANITE UNLIMITED Terms and conditions for the supply of goods

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this conditions apply in these conditions.

Buyer: the person, firm or company who purchase the goods from the company.

Contract: any contract the Company and the Buyer for the sale and Purchase of Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force under it.

1.3 Words in the singular include the plural and the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by Malcolm Wade. The Buyer acknowledges 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. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## 3. DESCRIPTION

3.1 The quantity and description of the Goods shall be set out in the Company's quotation or acknowledgement of order, subject to the other terms and conditions referred to herein.

3.2 With some types of marbles and granite it is customary for suppliers to glue loose pieces together during the production and possibly provide an adhesive for the back. The Buyer accepts this is common practice in the granite industry.

3.3 Any description or samples of material offered are for guidance only and do not imply suitability for any particular purpose. The Buyer agrees that they understand that granite and marble are natural stones which are cut in sections at a quarry and that there will be natural differences between each section of stone cut. Hence any sample will not be identical. As the granite, marble or other stone cut is a natural product there can be veins, flaws, colour variations and differences between different sections cut. Hence if the Buyer does not want a natural product the Buyer agrees that they were advised that they should purchase a man made processed stone which is more consistent in colour and not a natural stone. If the Buyer purchases a natural product the Buyer agrees to accept that this is what they will receive and they accept that natural products will vary in colour, texture, that flaws will occur and veins will occur.

3.4 The Buyer accepts that large cut outs can weaken the stone, granite or marble, particularly if the stone, granite or marble is cut so that there are only thin sections left. Should a run break across a cut out (Le a hob) the Company may have to re-cut that section if a reasonable repair cannot be made. In such circumstances the Company will reserve the right to add a joint across the cut-out should the working characteristics of the particular stone demand it. The Buyer should be aware that the thinner the section of granite or marble being cut the more likely it is that a crack should develop and the Company cannot be responsible if a section is cut less than 3 inches in width. The Buyer accepts that they were informed of this.

3.5 The Company will endeavour to use a few joints as possible, however should a section break as a result and require replacing or the slab be too short, it may be necessary for the Company to cut an additional joint to overcome a problem which the Buyer accepts.

3.6 Granite and marble work is sealed to help protect the stone from any liquid damaging or staining the surface if the Buyer requires this. The Company does not guarantee against damage and stains. Sealing is simply a process that may lessen the possibility of such incidents occurring but it will not stop all stains and damage. Once the goods are fitted it is the Buyers obligation to prevent staining and the Buyer agrees not to use chemicals or other products that may damage the goods.

3.7 Stone slab thickness can vary for different products. The worktops may need to be shimmed up with laminate packing, adjusting the thickness to suit the installation. This may also appear as a slight bow in the upper surface of the stone, which may cause a slight unevenness across the joints.

3.8 Granite is sometimes susceptible to "blowing out". This occurs when contact is made whilst cutting or grinding. This happens more often in stones with large particles. Provided the structural integrity of the -stone is not affected the Company will fill and seal the affected areas with epoxy resin and the Buyer accepts that the colour may vary from the rest of the goods supplied.

3.9 Granite and marble can have natural flaws, pockmarks, veining and irregularities in colour and therefore can never be guaranteed to remain consistent in colour or texture. Some granites and marbles are resin treated at source to fill natural flaws and pockmarks. If the Buyer does not want filling they must specify this in writing before the Buyer orders the goods.

3.10 Breakages can occur in the manufacturing process and delays can sometimes result. The Company will endeavour to finish the fabrication of the stone within a reasonable time although indicated timescales, on rare occasions, may have to be revised in the light of such breakages, particularly if the Buyer wishes for thin sections to be cut.

3.11 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any description or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.

## 4. DELIVERY

4.1 Save where the Goods are collected by the Buyer or unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's address stated on the order acknowledgement.

4.2 The Buyer shall take delivery of the Goods within 14 days of the Company giving notice to the Buyer that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified, delivery shall be .within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations :

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance)

4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.7 The Company may deliver the Goods by separate instalments.

4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.9 If the goods have been purchased without a site visit by Malcolm Wade then the goods will only be delivered to the ground floor. For delivery above ground floor additional manpower and machines necessary to effect a delivery shall be charged. The manpower shall be charged for at an additional £36 per hour and the cost of machines shall be charged at the hire cost plus £50.00.

## 5. NON-DELIVERY

5.1 In the event that delivery incurs the London Congestion Charge an additional surcharge is payable to cover this disbursement.

5.2 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.3 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.4 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. KITCHEN UNITS

6.1 The Company advises in all cases that all kitchen units are attached to the wall properly by the kitchen fitters prior to fitting any worktop. The Buyer accepts that it was their duty to ensure that the kitchen units were stable and that it is their negligence and not that of the Company.

## 7. PARKING

7.1 It is the Buyers responsibility to ensure that the Company can unload the goods as close to the Buyers premises as reasonably possible and the Buyer accepts that it is their duty to provide the relevant parking permits and permissions necessary to unload very heavy products. The Buyer therefore agrees to obtain parking permits in advance and agrees that in the event that the Company incurs parking tickets that they will reimburse the same if relevant parking permits were not obtained. If no suitable parking is available the Buyer will pay the additional manpower cost at £36 per hour per man and the cost of additional travel time.

## 8. LOCAL AUTHORITY PLANNING PERMISSION AND CONSENTS

8.1 The Buyer agrees that it is their obligation to obtain planning consent and listed planning consent and permissions. The Company does not hold out any expertise in this regard.

## 9. BUYER NOT AVAILABLE FOR INSTRUCTIONS

9.1 The Buyer confirms that they will be available to give instructions on how they wish for any difficult cuts or joins to be undertaken and in the event that they are not on site the Buyer gives the Company permission to use their best judgment as to how to undertake any joins or cuts.

## 10. APPLIANCES

10.1 The Buyer agrees to ensure that all sinks, appliances, hobs and ranges will be fitted and be in situ before the date agreed for the Company to attend site so that the Company can undertake cuts and joins properly and that if these items are not available then either :-

(a) The Buyer agrees to pay the wasted costs of attending at the rate of £36 per man per day and travel at 50 pence per mile; or

(b) The Company can, at its discretion do its best to estimate the cuts and joins and if it is necessary to return the Buyer will pay the additional charges of £36 per hour per man and 50 pence per mile.

## 11. CHANGES AFTER TEMPLATING

11.1 The Company will, in most instances, attend the site to measure and make templates. If the Buyer changes the site so that the measurements and template are no longer accurate the Buyer will be responsible for all consequential losses including recutting at £36 per hour per man and the cost of all additional materials which have to be purchased and travel costs at 50 pence per mile.

## 12. VEINS, FISSURES AND MICRO-CRACKS

12.1 All stone, marble and granite is likely to have veins, fissures and micro cracks. There can be weak points in the strength of the material. These veins, fissures and micro-cracks are in all natural stones, marble and granite and are part of the effect of buying a natural product. The Buyer agrees to accept that this is the case and agrees to accept that the Company cannot make natural stone products without natural faults.

## 13. OVERHANG

13.1 The overhang will be determined by the Company unless the Buyer specifically indicates otherwise in writing.

## 14. RE-SEALING

14.1. All worktop, granite, stone, travertine, onyx etc will have to be re-sealed from time to time. The Company will seal the original product however they are not responsible for resealing thereafter.

## IS. ROUTING, CUTTING

15.1 Most granite and other products provided by the Company are approximately 30mm thick but many hobs are in excess of this height. In the event that the fitters need to alter cabinets the fitters reserve the right to charge an extra £70 per cabinet.

## 16. BLACK AND SHINY GRANITE

16.1 Certain granite tends to show up marks much more than granites of a different nature. The Buyer agrees that if they choose a granite which is difficult to keep clean e.g a black or shiny granite that they were aware that this may happen.

## 17. TRAVERTINE

17.1 Quartz / Engineered Stone is man-made. It is not a natural product. It is produced from crushed stone and can contain pits. Some of the Quartz / Engineered Stone can be much more pitted than others samples of Quartz. Quartz, Travertine and other pitted granites and stone can accumulate dirt in the holes and it can be difficult to clean. The Buyer confirms that they are aware of this problem.

## 18. CHOPPING BOARDS/CUTTING AREAS

18.1 The Buyer agrees to use a chopping board for chopping and understands that surfaces can be damaged by being hit, stood on, dropped on, sat on, placing down of very hot saucepans etc. The Buyer agrees that stones, granite, marble etc are not products that flex. The Buyer agrees that the Company is not responsible for the Buyers actions.

18.2 The Buyer agrees that they will not approach the cutting area and nor will they allow, third parties, children or animals near the cutting area while the Company is cutting as small pieces of stone. In particular the Buyer agrees not to leave their car near an area where the Company is cutting. The Buyer accepts that if they leave their car near the cutting area that car windows and panels can be damaged. The Buyer, by signing the Agreement agrees to remove their and their neighbouring car's from any area where cutting is to occur by the Company and that if they do not move their / neighbours car that the Company is not liable to damage caused to their vehicle / Vehicles.

18.3 The Buyer agrees that they are responsible to ensure that no other person, child or pet shall be allowed by the Buyer to approach the cutting area and that they agree to undertake the monitoring of this. The Buyer

accepts all responsibility for negligence for failing to inform other members of their household visitors and other contractors of the dangers and they agree to reimburse the Company as a result of any claim by any third party as a result of injury or damaged caused by approaching the cutting area.

18.4 The Buyer accepts that cutting natural products travertine, stone, marble or granite creates dust. It is the Buyers obligation, if they wish to avoid dust damaging electrical goods or other items to remove those items from the area in which the Company is working.

19. RISK/TITLE

19.1 The goods are at the risk of the Buyer from the time of delivery.

19.2 Ownership of the goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of

- (a) the goods; and
(b) all other sums which are or which became due to the Company from the Buyer on any account.

19.3 Until ownership of the goods has passed to the Buyer, the Buyer shall:

- (a) hold the goods on a fiduciary basis as the Company's bailee;
(b) store the goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property.
(c) not destroy, deface or obscure any identifying mark or packaging on or relating to goods; and

(d) 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 Buyer shall produce the policy of insurance to the Company.

19.4 The Buyer's right to possession of the goods shall terminate immediately if:

- (a) The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters in liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administration receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1966) or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or
(b) the Buyer suffers or allows any execution, whether legal or equitable to be levied on his/her or its property or obtained against his/her or its or fails to observe or perform any of his/her or its obligations under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
(c) the Buyer encumbers or in any way charges any of the goods.

19.5 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.

19.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the goods are or may be stored in order to inspect them, or, where the Buyers right to possession has terminated to recover them.

19.7 Where the Company is unable to determine whether any goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

19.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this document shall remain in effect.

20. PRICE

20.1 Unless otherwise agreed by the Company in writing the price for the goods shall be the price set out in the Company's order acknowledgement form sent to the Buyer upon acceptance of the Buyer's order provided that in the case of any agreed variation of the Buyers order the price for the goods shall be the price set out in the order acknowledgement form as varied to take into account the agreed variation in the Buyers order. The additional costs referred to in this agreement shall be added to the price.

20.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance and the sums referred to in this agreement all of which amounts the Buyers shall pay in addition when it is due to pay for the goods.

21. PAYMENT

21.1 The payment of the price for the goods is due in pounds sterling so

that one-half of the price shall be paid by the Buyer upon the template being produced or if no template is produced 7 days before the delivery date in cleared funds and the other half shall be paid 14 days from the date upon which the goods are delivered or deemed to be delivered.

21.2 Time for payment shall be of the essence.

21.3 No payment shall be deemed to have been received until the Company has received cleared funds.

21.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

21.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

21.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Lloyds Bank TSB accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998

21.7 If the Buyer fails to pay the first half instalment in cleared funds the Company shall not be obliged to deliver any goods or services until this sum is paid.

22. QUALITY

22.1 Where the Company is not the manufacturer of the goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

22.2 The Company warrants that (subject to the other provisions of these conditions) on delivery and for a period of 12 months from the date of delivery, the goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
(b) be reasonably fit for purpose; and
(c) be reasonably fit for any particular purpose for which the goods, are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

22.3 The Company shall not be liable for a breach of the warranties unless:

- (a) the Buyer gives written notice of the defect to the Company and if the defect is as a result of damage to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
(b) the Company is given a reasonable opportunity after receiving the notice of examining such goods and the Buyer (if asked to do so by the Company) returns such goods to the Company's place of business at the Company's cost for the examination to take place there.
22.4 The Company shall not be liable for a breach of any of the warranties if:
(a) the Buyer makes any further use of such goods after giving such notice; or
(b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning use or maintenance of the goods or (if there are one) good trade practice; or
(c) the Buyer alters or repairs such goods without the written consent of the Company.

22.5 Subject to condition \*\*\*and condition\*\*, if any of the goods do not conform with any of the warranties in condition\*\* the Company shall at its option repair or replace such goods (or the defective part) or refund the price of such goods at the pro rate Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the goods or the part of such goods which is defective to the Company.

22.6 If the Company complies with condition\*\*\* it shall have no further liability for a breach of any of the warranties in condition\*\* in respect of such goods.

22.7 Any goods replaced shall belong to the Company and any repaired or replacement goods shall be guaranteed on these items for the unexpired portion of the 12 month period.

22.8 The Company shall not be liable for the invoices of third parties to mend or repair goods unless the Company has been given notice of the defect in writing, has had a reasonable opportunity of remedying the defect within a reasonable period of time.

23. LIMITATION OF LIABILITY

23.1 Subject to condition\*\*, condition\*\* and condition\*\* the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the goods; and

(c) any representation, statement or tortuous act or omission including negligence arising under or in connection with the Contract.

23.2 All warranties, conditions and other terms implied by statute or common law (save for conditions implied by section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contract.

23.3 Nothing in these conditions excludes or limits the liability of the Company:

- (a) or death or personal injury caused by the Company's negligence, or
(b) under section 2(3) Consumer Protection Act 1987; or
(c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
(d) for fraud or fraudulent misrepresentation.

23.4 Subject to condition\*\* and condition\*\*\*

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
(b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

24. ASSIGNMENT

24.1 The Company may assign the Contract or any part of it to any person, firm or company.

24.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

25. FORCE MAJEURE

25.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if in the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

26. GENERAL

26.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

26.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

26.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

26.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

26.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

26.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

27. COMMUNICATIONS

27.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax.

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
(b) (in the case of communication to the Buyer) to the registered office of the address (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

I hereby agree I have read and understood the Terms & Conditions (Signature): .....

Job Reference: .....

Date: .....