

TERMS

The following terms of trade, as amended from time to time (“Terms”), will apply to the supply of all Goods and Services by BLEND DESIGNS CO PTY LTD ACN 643 972 785 (“Blend”) to its Customer.

1. Definitions In these conditions

- 1.1. “ACL” means the Australian Consumer Law (for information about the Australian Consumer: <http://www.consumerlaw.gov.au>)
- 1.2. “Agreement” means the agreement between Blend and the Customer constituted by the Order, these Terms and any incidental or ancillary or accompanying documentation confirmed by Blend in writing as forming part of that agreement.
- 1.3. “Claim” includes any claim, demand, proceeding, action or similar event.
- 1.4. “Customer” means the person noted in the Order as the Customer and if there is more than one Customer it refers to each Customer jointly and severally. For ease of reference throughout the Agreement, the Customer is referred to as ‘it’ whether the Customer is a person or another form of legal entity.
- 1.5. “Goods” means the products to be supplied by Blend to the Customer as specified in the Order or subsequent Orders.
- 1.6. “GST Law” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended and other associated Acts as amended.
- 1.7. “Intellectual Property Rights” means all rights in and to any patents, database rights, copyright, design rights (whether registered or unregistered), Trade Marks (whether registered or unregistered), brand name, service mark, trade name and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, a commercial, scientific, literary or artistic fields, whether registerable or not and wherever existing, including without limitation all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.
- 1.8. “Loss” means any loss, damage, cost, expense or other adverse financial or other consequence.
- 1.9. “Order” means either
 - 1.9.1. the pages on Blend’s website which are completed by the Customer, or
 - 1.9.2. an email or other written communication from the Customer to Blend,

in which the Customer provides the details of the Goods or Services (or both) it would like to receive from Blend.

- 1.10. “ordinary, usual or proper use” means the Goods’ use in the normal living or workplace environment such as that in which it is installed and for the purposes for which it was installed;
- 1.11. “Services” means any services specified in the Order or any incidental or ancillary or accompanying services to be performed by Blend in connection with the supply of Goods whether gratuitously or not gratuitously.
- 1.12. “Warranty” means the warranty Blend gives the Customer pursuant to clause 12.
- 1.13. Words in the singular include the plural, and words in the plural include the singular, in each case as the context may require.

2. Governing Documents

- 2.1. This Agreement sets out the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, representations, warranties, commitments and other communications about the subject matter of the Agreement are of no effect. The meaning and interpretation of the Agreement will not be affected by any oral explanation or information provided by either party to the other which explanation and information will be of no relevance whatsoever.
- 2.2. In entering into this Agreement, the Customer acknowledges and confirms it has read and agrees it is bound by the terms contained in the following documents when using Blend’s website and/or otherwise transacting with Blend in relation to the purchase of Goods or Services
 - 2.2.1. any Orders
 - 2.2.2. these Terms
 - 2.2.3. Blend’s Care & Maintenance Guide
 - 2.2.4. Blend’s Installation Guide
 - 2.2.5. Blend’s ‘Qualities of Concrete’

- 2.3. No alteration or variation of the Agreement will be binding upon Blend unless such alteration or variation is agreed in writing by Blend.
- 2.4. In the event the Customer places new Orders after the first supply of Goods or Services by Blend,
 - 2.4.1. these Terms apply and have effect, and
 - 2.4.2. Blend reserves the right at all times to vary these Terms and any of the documents listed in clause 2.2 above provided that any such variation will only apply and have effect in relation to Orders placed by the Customer after such variation has been made and the duly varied document has been posted on Blend's website.

3. Entering into the Agreement

- 3.1. All Orders placed on Blend's website or confirmed in writing by the Customer constitute the Customer's acceptance of the terms of the Agreement including without limitation these Terms.
- 3.2. Upon Blend's confirmation of
 - 3.2.1. the details of the Order ("Confirmation"), and
 - 3.2.2. its approval of the Customer's credit card details or other payment details,the Agreement is entered into and a contract is formed.

4. Payment

- 4.1. Upon his receipt of Blend's Confirmation, the Customer must pay Blend the total sum calculated by Blend to meet the whole of that Order without deduction and without withholding any payments or set off. This is a fundamental obligation of the Customer's.
- 4.2. Payment referred to in clause 4.1 is effected upon it having been fully made in cleared funds to Blend's nominated bank account.
- 4.3. The Customer must pay GST to Blend on any taxable supply within the meaning of the GST Law made to the Customer pursuant to the Agreement. This payment of GST is included in and must be made at the same time as the whole payment referred to at clause 4.1.
- 4.4. Blend's obligation to supply the Goods or Services (or both) to the Customer pursuant to this Agreement does not arise until the payment by the Customer as set out in clause 4.1 is effected pursuant to clause 4.2. If it is

not made or any payment is dishonoured, rejected or otherwise fails to achieve the actual and permanent transfer of actual funds to Blend, then Blend has no obligation whatsoever to supply the Goods or Services until satisfactory payment is received in full. Any dishonour or rejection or similar fee(s) charged to, or other costs incurred by, Blend will be recoverable in full from the Customer.

- 4.5. Blend is not responsible for any delays in funds being received to the account nominated by Blend, nor is Blend responsible for banking errors or accounting or similar errors by the Customer.
- 4.6. The Customer will ensure that all transfers or remittances of funds to Blend are processed promptly and accurately and must not object if Blend charges Interest or Costs or refuses to supply the Goods or Services because funds have not been received by Blend when they are required by this Agreement to have been received.
- 4.7. If the Customer does not make any payment or pay the amount due on the due date in accordance with the terms of the Agreement, then without prejudice to any other right or remedy:
 - 4.7.1. Blend may, at its sole discretion, withhold the release of the Goods or the provision of Services or of any future deliveries of Goods or Services until receipt of actual payment of all unpaid amounts by the Customer;
 - 4.7.2. all outstanding money carries a late payment fee of 10% per annum calculated daily on the unpaid amounts from the date for payment to the date of actual payment ("Interest");
 - 4.7.3. any costs incurred by Blend in collecting monies due and payable (including, without limitation, the fee of any mercantile agencies or solicitors appointed by Blend) will be recoverable in full from the Customer ("Costs");
 - 4.7.4. Blend may recover any payment or amount due under the Agreement together with any Costs incurred and Interest from the Customer as a liquidated debt in a court or tribunal of a competent jurisdiction irrespective of any Claim which the Customer may have against Blend for any thing or matter related to the Goods or Services delivered under the Agreement.

4.9 From time to time, Blend may decide to proceed with the supply of Goods or Services (or both) in advance of its receipt of the Customer's payment as otherwise required pursuant to clause 4.1. In this event, until Blend has been actually and permanently so paid pursuant to clause 4.2, it reserves the following rights in relation to the Goods and Services:

- 4.9.1 legal ownership of the Goods;
- 4.9.2 the right to enter and remain upon the Customer's property (or any land under the control or in the possession of the Customer or of any associated company or agent of the Customer where the Goods are located) as agent for the Customer, without liability for trespass or nuisance or any resulting damage;
- 4.9.3 the right to retake possession of the Goods;
- 4.9.4 the right to keep or resell or reuse any Goods repossessed; and
- 4.9.5 the right to withdraw the benefit of the Services provided to the Customer.

4.10 If the Customer disputes the whole or any part of the amount claimed in a Tax Invoice issued by Blend, then the Customer must pay that part of the account that is not in dispute and must provide in writing to Blend the reasons for disputing the unpaid amount of the Tax Invoice. For the avoidance of doubt, any delay in delivery of any Goods or Services will not entitle the Customer to dispute or to delay the payment of any part of any Tax Invoice.

4.11 If after the date of acceptance of the Order there is any change to relevant laws, by-laws, regulations or ordinances of any Australian Government or statutory authority and that change directly or indirectly affects the costs or expenses incurred by Blend in providing the Goods or Services then the amount charged by Blend may be varied accordingly by Blend at its election.

4.12 The Customer authorises Blend to conduct all credit checks and searches of the Customer and its financial and business affairs deemed necessary by Blend. The Customer will provide all necessary authorisations for credit checks and searches as requested from time to time by Blend. The Customer authorises Blend to use that information for credit assessment, debt collection, direct marketing activities and/or any other purpose deemed necessary by Blend and disclose that

information to credit reporting agencies and other credit providers.

4.13 Blend is not obliged to accept any cancellation or withdrawal of an Order after the Order has been communicated by the Customer to Blend. If Blend does accept such a cancellation or withdrawal, then Blend will be entitled to

- 4.13.1 charge the Customer a cancellation fee which is at least equal to 10% of the gross value of the cancelled or withdrawn Order
- 4.13.2 full reimbursement from the Customer of any charges and other related costs incurred by Blend in relation to the Goods or Services (or both) under the cancelled or withdrawn Order.

5. Price

5.1. Prices for the Goods and Services are provided on Blend's website or, when they are not on the website or Blend advises the Customer of revised pricing, as confirmed by Blend when an Order is finalised.

5.2. GST, other government taxes if any, delivery charges and extra packaging charges will be payable by the Customer.

5.3. Blend will use all reasonable endeavours to ensure the prices displayed on its website or elsewhere in its published materials are correct at the time the Customer makes an Order.

5.4. The Customer acknowledges and accepts

- 5.4.1. Blend could make an error in the publication of the prices of its Goods and Services;
- 5.4.2. Blend will be under no obligation to fulfil an Order for Goods or Services that were advertised at an incorrect price provided Blend gives the Customer the opportunity to re-order same at the correct price.

5.5. For the purposes of any payment obligation under this Agreement, time is of the essence.

6. The Goods and Services

6.1. The Goods and Services supplied by Blend will be in accordance with the specifications disclosed by Blend on its website or other medium supplied to Customer by Blend and accepted by the Customer in the form of the Order.

- 6.2. Subject to clause 6.3, Blend will supply the Goods and Services in a time period which is reasonably consistent with any period specified in the Order.
 - 6.3. Blend will not be bound to supply the Goods if, due to a deficiency in product material supply, Blend cannot supply the Goods or Services within six weeks of the Order being confirmed, and Blend will notify the Customer to provide a full refund (less any charges pursuant to clause 4.4) within 30 days of such notification.
 - 6.4. The Goods supplied by Blend are intended by the Customer to be used for their ordinary, usual or proper purpose.
 - 6.5. Subject to clause 6.6, in producing the Goods, Blend will use all reasonable endeavours to:
 - 6.5.1. achieve through its management of the production process the colour desired by the Customer as indicated in the Order;
 - 6.5.2. match the sizes and measurements prescribed by the specifications confirmed in the Order.
 - 6.6. The Customer acknowledges and accepts
 - 6.6.1. Blend's 'Qualities of Concrete' referred to at clause 2.2.5;
 - 6.6.2. that all sizes and measurements contained in any specifications of the Goods in an Order are approximate;
 - 6.6.3. that concrete is a natural product and will have natural variations in colour and finish;
 - 6.6.4. the inherent and desirable characteristics of concrete products and that, due to the nature of concrete, exact replication is not possible and the Goods may vary in colour and texture as between themselves and also in comparison to samples or other examples of products made by Blend and displayed in various media including without limitation Blend's website, social media and marketing materials (including but not limited to photographs and computer-generated images), and
 - 6.6.5. Blend will not be responsible for imperfections, markings and discolorations that may appear in the final finish of the Goods' production process which are out of Blend's control.
 - 6.7. The Customer acknowledges Blend's invitation to attend Blend's showroom to inspect samples and other examples of its products before ordering the Goods.
 - 6.8. The Customer will install the Goods in accordance with Blend's Installation Guide referred to at clause 2.2.4.
 - 6.9. The Customer will maintain the Goods in accordance with Blend's Care and Maintenance Guide referred to at clause 2.2.3.
- 7. Damage to Goods for which Blend will not be liable**
- 7.1. Blend will not be responsible nor liable for damage to Goods which includes but is not limited to structural damage, surface damage, discolouration or cracking caused by
 - 7.1.1. general wear and tear;
 - 7.1.2. use not intended for the Good's ordinary, usual or proper purpose;
 - 7.1.3. improper use or abuse which includes but is not limited to damage from mishandling the Goods, excessive heat, uneven exposure to weather conditions and physical or chemical abuse;
 - 7.1.4. a failure to comply with Blend's Installation Guide;
 - 7.1.5. a failure to comply with Blend's Care and Maintenance Guide;
 - 7.1.6. accidental damage;
 - 7.1.7. modification, cleaning, or repair made by any party other than Blend;
 - 7.1.8. fire, lightning and other such hazards whether natural or manmade;
 - 7.1.9. physical relocation;
 - 7.1.10. chips or other such impact damage;
 - 7.1.11. excessive pressure such as sitting, standing or applying force to the Goods that would be considered outside ordinary, usual or proper use;
 - 7.1.12. scratches which can arise despite Blend's scratch resistant (but not scratch proof) sealers because of a lack in the exercise of care and maintenance such as not using a cutting board, and
 - 7.1.13. stains which can arise despite Blend's stain resistant (but not stain proof) sealers because of a lack in the exercise of care and maintenance such as failing to wipe down a

surface immediately following use and any spills, and

7.1.14. thermal shock, for example when a hot item is left on a Good's countertop.

7.2. The Customer acknowledges and accepts:

7.2.1. the uniqueness of each of the Goods which may be comprised of concrete, steel, aluminium, powder coated products, timber and other materials and all of which may be the subject of natural variations in the colour, pattern and finish, and

7.2.2. such natural variations are a natural part of the piece and do not fall under consideration of the Warranty

7.3. The Customer acknowledges and accepts that:

7.3.1. Blend does not warrant any damage caused if its sealing system is compromised by scratching, heat, abrasive surfaces, chemicals, accidental chipping, dropping, accidents beyond control, exposure to weather, improper installation or contact with incompatible substances., and

7.3.2. the concrete in the Goods is water and stain tolerant, but not water proof or stain proof, and the Goods will naturally wear over time and, because concrete is a porous surface, it is to be expected that the Goods will develop character from weather & human usage over time.

7.4. The Customer acknowledges and accepts the specifications of the Goods and that Blend will bear no responsibility or liability for damage to surfaces or other structures connected to or within the vicinity of the locations of the Goods.

8. Risk and Title

8.1. Risk in the Goods passes to the Customer upon its delivery to the delivery address designated by the Customer or when it is picked up by the Customer at Blend's production site, as the case may be.

8.2. Title in the Goods remains with Blend until all monies referred to in clause 4.1 have been paid in accordance with clause 4.2. Until title passes to the Customer, the Goods will be held on trust by the Customer as bailee for Blend.

9. Delivery

9.1. Supply of the Goods pursuant to an Order includes but is not limited to Blend arranging delivery of the Goods

9.1.1. to the address provided by the Customer and included in the Order and the Confirmation, and

9.1.2. for which a charge will be made and included in the payment details for immediate payment pursuant to clause 4.1.

9.2. The Customer acknowledges delivery dates provided in the Confirmation are estimates only and agrees that Blend will not be liable for any loss or damage for failure to deliver by those dates.

9.3. The Customer acknowledges and agrees that

9.3.1. Blend may make partial deliveries of any Order as it deems reasonably necessary for which it would render to the Customer an invoice which the Customer would duly pay;

9.3.2. failure by Blend to make delivery of the total Order in the one delivery will not invalidate the sale pursuant to the Order, and

9.3.3. in the event that, when the Goods are delivered at the address nominated by the Customer, neither the Customer nor its representative is in attendance, the Goods may be left at that address and Blend will not be liable for any Claims of whatsoever nature that the Goods had not been delivered or had been damaged.

10. Returns

10.1. Subject to and to the extent permitted by the ACL

10.1.1. Goods are sold on a non-return basis and, unless they are damaged or faulty such that the Customer is entitled to the Warranty, cannot be returned;

10.1.2. Blend reserves the right to inspect the Goods the Customer proposes be returned under the Warranty;

10.1.3. delivery charges are not refundable.

11. Access

11.1. To the extent that the Order includes Services such as, without limitation, delivery and installation of the Goods at the Customer's designated address, the

Customer will provide Blend and its representatives appropriate access to that address and have suitable measures in place to allow Blend's representatives to carry out the Services in a practical, safe and healthy environment.

12. Warranty

12.1. Blend warrants to the Customer the Goods will be free from defects in workmanship and materials for a period of 12 months after the date of delivery (the "warranty period") on the strict proviso the Goods are used in the manner and under the conditions for which it was created by Blend.

12.2. The Customer will only be entitled to exercise its rights under this Warranty if the Customer

- 12.2.1. has paid Blend for the Goods in full;
- 12.2.2. notifies Blend of the apparent defect within five business days of it coming to the Customer's attention;
- 12.2.3. makes a claim under the Warranty within the warranty period, and
- 12.2.4. allows, or arranges for, Blend to inspect the Goods claimed to be defective at the usual location of same;

12.3. This Warranty is a limited warranty and extends only to defects in Goods which arise during their ordinary, usual or proper use and further, and for the avoidance of doubt, this Warranty does not apply to any damage to the Goods caused by any of the circumstances listed in clause 7.

13. This Warranty shall not apply if:

- 13.1. the Customer or a third party modifies or repairs the products without Blend's prior written approval; or
- 13.2. after discovery of a defect, the Customer fails to take prompt and reasonable steps to prevent the defect from becoming more serious.

14. Representations, guarantees and conditions

14.1. All representations or terms (including any condition or warranty expressed or implied by law, statute or otherwise) not expressly included in the Terms are hereby expressly excluded.

14.2. These Terms do not restrict or modify any conditions, warranty, guarantee, right or remedy implied by law

which, by the terms of the law cannot be excluded, restricted or modified.

14.3. If the ACL applies to the relevant relationship between the parties to the Agreement, then this clause 12 and its parts, and any other parts of the Agreement, are intended to be read down or severed if necessary, to the extent necessary to ensure that there is no breach of the ACL.

14.4. Notwithstanding the other provisions of the Agreement, if the ACL applies to the relevant relationship between Blend and the Customer, then:

- 14.4.1. the Goods and Services supplied by Blend come with guarantees that cannot be excluded under the ACL;
- 14.4.2. the Customer is entitled to a replacement of the Goods or a refund for a major failure and to compensation for any other reasonably foreseeable and resultant Loss; and
- 14.4.3. the Customer is also entitled to have the Goods supplied by Blend repaired or replaced if the Goods fail to be of acceptable quality but the failure does not amount to a major failure.

14.5. Except as otherwise provided by law, no Claim may be brought against Blend unless notice of such Claim is given to Blend within 30 days of delivery of the Goods and Blend will be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of accrual of any cause of action.

15. Intellectual Property and use of information

15.1. The Customer acknowledges and agrees that, as between the parties, all Intellectual Property Rights and all other materials contained on Blend's website remain the property of Blend and, for the avoidance of doubt, Blend retains ownership of any specifications, reports or other information in relation to the Goods and Services published by Blend on its website or elsewhere.

15.2. Upon the commencement of the Agreement, Blend grants the Customer a non-exclusive license to use or make copies (electronically or print in hard copy) of information or intellectual property contained on Blend's website or in other of Blend's publications

- 15.2.1. for the sole purpose of placing an Order;
- 15.2.2. when using the website as a shopping resource, or
- 15.2.3. as part of works for genuine end users of the Goods who are acting in good faith.

15.3. In the absence of Blend's prior written permission, the Customer is prohibited from any use of

- 15.3.1. Blend's Trade Marks and trade names.
- 15.3.2. the materials or content on Blend's website or where published elsewhere including any reproduction for a purpose other than those noted in clause 15.2.

15.4. The Customer acknowledges Blend may from time to time provide on its website links to other websites or resources unrelated to Blend and the Customer agrees that, as it will have exercised its own discretion and chosen to enter the linked website, Blend will take no responsibility for any content whatsoever in those other website or materials referred to therein, nor will Blend be liable, directly or indirectly, for:

- 15.4.1. any such linked website's privacy practices;
- 15.4.2. any such linked website's content, and
- 15.4.3. the use to which others make of these websites or resources
- 15.4.4. any Loss or offence caused or alleged to be caused by, or in connection with, the use of or reliance on any of such linked website's content.

16. Indemnity

16.1. To the extent permitted by law, the Customer indemnifies Blend against any Loss or Claim arising, directly or indirectly, in connection with the Goods or Services or directly or indirectly out of the Agreement or otherwise from the relationship between Blend and the Customer and any third party. This includes without limitation indemnifying Blend for any Loss or Claim, including Interest and Costs, associated directly or indirectly with any breach of the Agreement by the Customer and any legal fees and expenses Blend incurs in order to enforce its indemnity rights, on an indemnity basis.

16.2. Each indemnity obligation and payment obligation of the Customer's under the Agreement is a continuing obligation which is separate and independent from all

other of his obligations and survives the termination of this Agreement or any of its other terms

17. Limitation or exclusion of liability

17.1. If Blend causes any Loss to the Customer directly or indirectly in connection with the Goods or Services, then the extent of Blend's liability will be limited to a maximum of the price actually paid to Blend by the Customer for the Goods and Services. Blend's liability will also be reduced to the extent that the Customer or any other person contributed to the Loss.

17.2. To the extent permitted by law, Blend will owe no liability whatsoever to the Customer and/or any third party for any indirect, special, consequential or exemplary Loss or personal injury suffered by the Customer and/or any third party directly or indirectly in connection with the Goods or Services or directly or indirectly arising out of the Agreement or otherwise from the relationship between Blend and the Customer and any third party, and whether actionable in contract, tort (including negligence), equity or otherwise.

17.3. Further and without prejudice to any other limitation, any liability of Blend to the Customer is, in relation to the Goods and Services, limited to the re-supply of those Goods and Services or the cost of that re-supply.

18. Governing law and severability

18.1. The Agreement will be governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of that jurisdiction.

18.2. If any part or provision of the Agreement is held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to the extent possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of the Agreement will remain binding on the parties.

19. Force Majeure

19.1. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Blend, Blend is unable to perform in whole or in part any obligation

under the Agreement, then Blend is relieved of that obligation under the Agreement to the extent and for the period that it is so unable to perform and is not liable to the Customer in respect of such inability.

20. Default and Termination

20.1. Subject to clause 19.2 and without prejudice to any of a party's other rights and entitlements under this Agreement, a party may terminate this Agreement at any time and for any reason, by written notice to the other party, effective upon receipt by the other party.

20.2. Any termination referred to in clause 19.1 will only take effect in relation to any future Orders of Goods and in relation to future Orders for Services and not those Orders that have become the subject of agreement pursuant to clause 3.2.

20.3. If the Customer commits any of the following acts then Blend may immediately or at any time without giving any notice to the Customer, suspend or terminate the Agreement:

- 20.3.1. commits any act of bankruptcy;
- 20.3.2. commits any act of dishonesty or fraud in relation to the Agreement;
- 20.3.3. being a company does any act which would render it liable to be wound up or has a receiver or administrator appointed over itself or its property, and
- 20.3.4. being a company ceases to carry on business, or has a change in ownership.

21. Notices

21.1. Notices and notifications under this Agreement must be in writing and addressed to the usual or last known place of business of the party to whom that Notice is to be given.

21.2. The Customer must promptly inform Blend of any change to its address for accounts, its desired delivery address or of any other change in relation to the Customer which may affect Blend.