

1. DEFINITIONS

- 1.1. 'The Company' means 'The Keystone Company UK Limited' trading as 'Kinorigo'
- 1.2. 'The Customer' means the Customer named on the Company's acknowledgement of order or order confirmation
- 1.3. 'The Contract' means the contract for the sale of goods by the Company to the Customer.
- 1.4. 'The Goods' means any goods forming the subject of this Contract including parts and components or materials incorporated in them.
- 1.5. The 'Company's Conditions' means these Standard Terms and Conditions together with any other conditions referred to in the Company's written acknowledgement of order. If any of the conditions conflict, then specific conditions in the written acknowledgement of order take precedence over these standard conditions.
- 1.6. 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

2. ESTIMATE/TENDER VALIDITY AND EXISTENCE OF CONTRACT

- 2.1. Estimates/tenders given in writing by the Company (verbal communications do not constitute an estimate/tender) shall unless otherwise stated be open for acceptance for 3 months from the date thereof, after which the Company reserves the right to modify the estimate/tender. The Company may withdraw its estimate/tender at any time prior to written acknowledgement of order.
- 2.2. Any acceptance of the estimate/tender by the Customer whether written or verbal will be subject to the Company's written acknowledgement. It is the Customer's responsibility to notify the Company of any discrepancies in the acknowledgement, in writing within 7 days of receipt. The company will not be liable for any losses due to a discrepancy in the acknowledgement should the Customer fail to notify the Company within the said timescale.
- 2.3. No contract shall exist until
 - a) The Company issues a written acknowledgement of order by its authorised representative, and
 - b) The Company has received the required deposit, or
 - c) The Company has satisfactory credit insurance for the Customer.
- 2.4. If the Company's Conditions are at variance or inconsistent with any provision or conditions (whether special or general) contained or referred to in the Customer's enquiry or subsequent order, then the Company's Conditions as described above shall prevail and be effective. JCT or other subcontract conditions do not apply.
- 2.5. Variations or amendments to the contract, or any terms thereof, shall not be binding or valid unless agreed and confirmed by the Company in writing, by its authorised representative save as may be provided in the Company's Conditions.
- 2.6. All estimates/tenders are supply only unless specifically noted otherwise
- 2.7. No order that has been acknowledged in writing by The Company may be cancelled by the Customer except with the written agreement of the Company and on the terms that the Customer shall indemnify the Company in full against all loss, including but not limited to loss of profit, costs, (including loss of all materials used and labour) charges and expenses incurred by the Company as a result of cancellation.

3. CANCELLATIONS/SUSPENSION OF MANUFACTURE AND DELIVERIES.

- 3.1. The Customer will in the event of agreed cancellation indemnify the Company fully as per condition 2.7.
- 3.2. The Company may, without prejudice to its other rights in law, suspend or cancel further manufacture, deliveries or services under this or any other contract between the parties hereto and debit the Customer with any losses incurred if:-
 - a) The Customer shall fail to make payment in full of any sum owing by the date due
 - b) The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation or an encumbrance takes possession or a receiver or administrative receiver is appointed.
 - c) The Customer ceases or threatens to cease to carry on business.
 - d) The Customer has any distress or execution levied on its goods.
 - e) The Company reasonably apprehends that any of the events mentions in (b) to (d) above is about to occur in relation to the Customer and notifies the Customer in writing accordingly.
 - f) The value of goods delivered but not yet paid for exceeds or if delivered would exceed the Customer's credit limit with the Company.
- 3.3. If the Customer refuses, is unable to, or fails to take delivery of goods or services by the date specified in the Contract or by any date for delivery subsequently advised in writing by the Company a minimum of one week prior to the actual delivery date, or where no date is specified, within a reasonable period, the Company may, without prejudice to its other rights submit an invoice for payment as though the goods or services had been delivered or carried out. The invoice to include storage charges if appropriate. The Company may having given written notice of its intention to do so, sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses, account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 3.4. This clause shall apply where the Customer is dealing as a consumer:
 - a. The Customer has the right to cancel the Contract at any time up to the end of seven working days after it receives the Goods. A working day is any day other than weekends and bank or other public holidays.
 - b. To exercise its right of cancellation, the Customer must give written notice to the Company by hand or post, fax or email, at the address, fax number or email address shown below, giving details of the Goods ordered and (where appropriate) their delivery.
 - c. If the Customer exercises its right of cancellation after the goods have been delivered to it, the Customer will be responsible for returning the Goods to the Company at its own cost. The Goods must be returned to the address shown on the acknowledgement of order. The Customer must take reasonable care to ensure the Goods are not damaged in the meantime or in transit.
 - d. Once the Customer has notified the Company that it is cancelling the Contract, the Company will refund or re-credit the Customer within 30 days for any sum that has been paid by it or debited from its credit card for the Goods.
 - e. If the Customer does not return the Goods as required, the Company may charge the Customer a sum not exceeding the direct costs of recovering the Goods.
 - f. The Customer does not have the right to cancel the Contract for Goods which have been made to the Customer's specification, the Goods are clearly personalised or the Goods by their nature cannot be returned or are liable to deteriorate or expire rapidly. The Company will notify Customer at the time the order is accepted if this applies.

4. PRICES AND FLUCTUATIONS

- 4.1. All rates and prices are strictly Nett and exclude VAT, 2.5% contractor's discount, retention and future or promulgated increases and or any other tax or levy which shall be charged in addition at the rate in force of any payment required.
- 4.2. All rates and prices, unless specifically stated in writing by the Company, are exclusive of packaging, carriage, and any other additional costs such as tests, inspection, samples, insurances, bonds, warranties, duties or other impositions which will be charged to the Customer/Contract, in addition to the price of the Goods.
- 4.3. The rates and prices in the estimate/tender are based on and are subject to acceptance by the Customer of the entire estimate/tender.
- 4.4. Errors and omissions excepted shall be subject to correction without any liability on the part of the Company.
- 4.5. The Company's rates and prices are based on the specification, quantities and programme provided at the date of estimate/tender, as qualified by these Conditions and the estimate/tender. The Customer will be invoiced for the actual quantities, design details and programme required by the Customer. In the event of significant variation to either specification, quantities, details or programme the Company reserves the right to amend the rates accordingly, which need not necessarily be on a pro rata basis, but may at the Company's discretion, be in accordance with the latest issue of the Company's Standard Price List and Catalogue of Stone Working Times.
- 4.6. The Customer shall be liable in full for all loss (including but not limited to loss of profit), costs, abortive costs, charges and expenses incurred by the Company as a result of the Customer's failure to comply with these Conditions and in particular, but not limited to, failure to provide manufacture details in good time and variations to works which have already been scheduled/manufactured.
- 4.7. The Company reserves the right by giving written notice to the Customer before written acknowledgement of the order, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company.

5. TERMS OF PAYMENT

- 5.1. Payment for goods and services is required in full prior to commencement of manufacture, except where the Company at its discretion offers the Customer a credit facility. The Company may withdraw the Customer's credit facility at any time during the contract if the Company is not longer able to secure sufficient credit insurance for the Customer, if the Customer fails to comply with these Conditions or if the Company has reasonable cause to believe the Customer will not make future payments due under the contract.
- 5.2. The price for goods or services shall be payable not later than 30 days after the date of the invoice. Goods will be invoiced when they are ready for dispatch and in instalments where appropriate. The Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.
- 5.3. Time for payment shall be of the essence. Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date, the Customer shall not be allowed any discount given in that invoice. The Customer shall pay interest on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at a rate of 8% per annum over the base rate from time to time quoted by the National Westminster Bank plc and the Customer shall reimburse to the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.
- 5.4. Where the Customer fails to pay the invoice by the due date, all deliveries will be suspended on this and all other Contracts with the company, until the invoice and any additional costs incurred under clause 5.3 have been paid. The Company reserves the right, after such a failure, to cancel the Customer's credit facility, at any time during the contract. The contract will henceforth operate on a cash account basis, whereby payment will be required based on proforma invoices prior to manufacture and/or despatch of goods, at the Company's discretion. The Customer's credit facility can be reinstated at any time at the Company's discretion.
- 5.5. If the Customer's status changes, as defined in Condition 3.2(b) to (e) the price of all Goods and Services for the contract less all cleared payments already received, including the full price of all part scheduled or part manufactured Goods and all finished Goods whether or not delivered, shall become due immediately, and payable notwithstanding any agreement to the contrary.
- 5.6. Without limiting any other right or remedy available to the Company, the Company may cancel the contract.

6. DELIVERY

- 6.1. Delivery of the Goods shall be made by the Company delivering the Goods to the place notified to the Company in the Customer's order and the written acknowledgement of the order by the Company.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer
- 6.3. Deliveries are, unless stated otherwise, based on full consignments, with vehicles provided with unrestricted access and a suitable handstanding, should these conditions not be met, through no fault of the Company, an additional charge will apply.
- 6.4. The Company reserves the right to make deliveries by instalments.
- 6.5. Any offloading period in excess of 2 hours, will at the Company's discretion, be subject to an additional charge.
- 6.6. The Customer shall be responsible for unloading the goods at the Customer's expense and risk, unless otherwise agreed in writing by the Company prior to delivery.
- 6.7. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.
- 6.8. If the Company fails to deliver the Goods (or any instalment) for any reason other than a cause beyond the Company's control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.9. If the customer fails to take delivery of the Goods or fails to give adequate delivery instructions (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to us, the Company may:-

- a) Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) or storage; or
- b) Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

7. PERFORMANCE AND LIABILITY

- 7.1 The Company will manufacture Goods in accordance with the Company's programme. The Company's programme takes precedence over all other programmes. The Company will advise the Customer in writing of the programme and any amendments thereto.
- 7.2 It is the Customer's duty to allow a tolerance of 5-10% for cutting and waste in any order the Customer places.
- 7.3 It is the Customer's duty to place orders in good time in order that production slots can be allocated to achieve the programme. It is the Customer's duty to provide all necessary stone schedules, quantities, templates and relevant information a minimum of 2 weeks prior to manufacture, to facilitate the Company's pre-manufacture scheduling and preparations and to provide all the aforementioned information in a sequence to facilitate economic production and in particular production of all like stones together. Failure by the Customer to meet the requirements of this Condition may result in deferment of the programme and re-pricing of the contract in accordance with Conditions 4.5 and 4.6.
- 7.4 The Company shall not be liable for any penalty, loss, consequential loss, liquidated damages, injury, damages or expense arising from any failure in delivery or performance arising from circumstances outside the Company's control, including but not limited to force majeure, war or hostilities, government legislation order or discretion, strike lock out or labour disturbance, civil commotion, fire, accident, shortage of materials (those of the Company or its supplier's), geology of the stone, power failure, breakdown of machinery, police or local authority restrictions, delays in issue, approval or clearance of working drawings, stone schedules, templates or other relevant information, lack of instruction from the Customer or suspension of the Customer's credit facility and any other cause outside the Company's control.
- 7.5 Any claim that goods have been delivered damaged, collected by the Customer in a damaged condition, are not of the correct quantity or do not comply with their description, shall be notified by the Customer to the Company within 7 days of delivery or collection.
- 7.6 Any alleged defect shall be notified in writing by the Customer to the Company within 7 days of delivery, or in the case of any defect which is not reasonably apparent on inspection, within 7 days of the defect coming to the Customer's attention.
- 7.7 No claim against the Company shall be allowed for any defect arising from any design or specification provided or made by the Customer or if any adjustments alterations or other work has been undertaken on the goods by any person other than the Company.
- 7.8 Any claim under this condition must be in writing, accompanied by photographs, fully quantified and contain reference numbers and other details to support the claim including details of any alleged defects.
- 7.9 The Company shall be afforded reasonable opportunity and facilities to investigate any claim made under this condition.
- 7.10 In the case of goods which the Company agrees are defective, the Company shall be allowed a reasonable time to rectify any defect or supply replacement goods, whichever the Company deems appropriate, at the Company's expense.
- 7.11 If the Company agrees that recompense is due to the Customer for defects in accordance with this condition, a credit note will be issued against the relevant invoice. The Customer shall not make set offs against payments due on this or any other order/contract with the Company. The Company's recompense shall not exceed the invoiced price of the particular defective Goods.
- 7.12 Where the Company is liable under this condition in respect of part of the goods, then the contract shall remain in full force and effect in respect of the other part or parts of the goods and no set off or other claim shall be made by the Customer against or in respect of such other part or parts of the goods.
- 7.13 All other liabilities including, but not limited to, consequential loss, carriage or loss of profit are expressly excluded from any claim against the Company.
- 7.14 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods without the Company's approval in writing.
- 7.15 The Company shall have no liability with regard to any claim in respect of which the customer has not complied with the provisions of this or any other condition herein.

8. RISK AND RETENTION OF TITLE

- 8.1 Risk in goods shall pass to the Customer when the goods are delivered or collected by the Customer or its agent.
- 8.2 Notwithstanding the earlier passing of risk to the Customer, property and ownership of any Goods supplied will remain the property of the Company and title in the goods shall not pass to the Customer until any amounts due are paid and received in full.
- 8.3 Until the title passes the Customer shall hold the Goods as bailee for the Company, shall insure the Goods against all reasonably insurable perils and shall store and mark the Goods so that they can at all times be identified as property of the Company.
- 8.4 If the Customer fails to comply with the payment conditions, the Company shall be entitled at any time, until the property of the Goods passes to the Customer, to require the Customer to deliver up the Goods to the Company, and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 8.5 The Customer shall not be entitled to pledge or in any way charge by way of security for and indebtedness any of the Goods which remain the Company's property, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any of the Company's other rights and remedies) forthwith become due and payable.

9. SPECIFICATION

- 9.1 The Company's ability to provide specified sizes will be subject to availability of suitable material at the date of manufacture or supply.
- 9.2 Tolerances for unrectified porcelain are approximately +/- 6%.
- 9.3 All goods are supplied on the clear understanding that natural stone materials and finished masonry products will be subject to natural formation characteristics, variation in colour, markings, texture, grain, bed and moisture content. 5%-10% is expected to be used for cutting and waste.
- 9.4 The Company reserves the right to supply a similar alternative where, for reasons outside its control, it is unable to supply the stone originally specified.

- 9.5 Any samples supplied are merely indicative of the type of the material and will not necessarily show the variation in colour, marking etc over larger areas of stonework, this can only be seen by inspecting the Quarry. All characteristics as shown by the Range Panels at source shall be considered typical of the stone and not as flaws and they shall not be a reason for rejection.
- 9.6 All site dimensions, sizes, cutting lists, moulds templates required for the execution of the works, unless otherwise agreed and confirmed in writing by the Company, are to be provided by the Customer.
- 9.7 Unless specifically provided for in the estimate/tender, no drawing or design work has been, or will be provided by the Company.
- 9.8 Any specifications, literature or particulars supplied by the Company are submitted in confidence and for use and information of the Customer only, and any copyright and other intellectual property rights therein shall remain the property of the Company.
- 9.9 The Company shall have no responsibility for the design of the Goods unless specifically agreed in writing; the Company shall not be responsible for the suitability or fitness of purpose of the Goods supplied.
- 9.10 If the Goods are to be manufactured or any process is to be applied to them by the Company in accordance with a drawing design or specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in settlement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's drawing, design or specification.
- 9.11 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory E.U. requirements or, where the Goods are to be supplied to the Company's specification which do not affect their quality or performance.
- 9.12 The Customer warrants that the intellectual property in any drawing, design or specification provided to the Company vests in the Customer and agrees to indemnify the Company for any claims brought by a third party against the Company relating to the infringement of intellectual property rights in the drawing, design or specification.
- 9.13 The Customer acknowledges that the Company is the owner of all intellectual property rights existing in any drawing, design or specification created by the Company once completed.

10. SUB-CONTRACTING

- 10.1. The Company reserves the right to sub-let the whole or any part of the Contract.

11. LAW AND CONSTRUCTION

- 11.1 The Contract shall be governed by English Law and the Customer consents to the exclusive jurisdiction of the English Court in all matters regarding the Contract except to the extent the Company invokes the jurisdiction of the Court of any other country.
- 11.2 The headings and conditions are for convenience of reference only and shall not affect their interpretation.
- 11.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other condition.
- 11.4 The parties agreed that if any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in questions shall not be affected thereby.
- 11.5 This estimate/tender constitutes an invitation to treat and is not an offer.
- 11.6 A notice required or permitted to be given by either party to the other under the Company's Conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice.

12. INTERNATIONAL AGREEMENTS

- 12.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.
- 12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agree in writing between the Customer and the Company) apply notwithstanding any other provision of these Terms.
- 12.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 12.4 Unless otherwise agreed in writing between the Customer and the Company, the Goods shall be delivered fob the air or sea port shipment and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 12.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 12.6 Unless otherwise required by the Company, payment of all amounts due to the Company shall be made by irrevocable letter of credit, in a form acceptable to the Company, to be opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company within 14 days after the Contract is concluded.

13. INSOLVENCY IF CUSTOMER

- 13.1 The clause applies if:-
 - a) The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - b) An incumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Customer; or
 - c) The Customer ceases, or threatens to cease, to carry on business; or
 - d) The Company reasonably apprehends that any of the events mentioned above are about to occur in relation to the Customer and notifies the Customer accordingly.
- 13.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.