1 Definitions and interpretation

1.1 In these Terms: "apaiser" means apaiser Pty Ltd (ABN 86 061 790 618); "Customer" means the party to whom apaiser agrees to supply Goods; "Consumer" means a person who acquires Goods as a consumer within the meaning of section 3 of the Australian Consumer Law; "Goods" means the goods and/or services agreed to be supplied, including bespoke and made-to-order items; "Order Confirmation" means apaiser's written confirmation (including a pro forma invoice) of an order; "Agreement" means these Terms together with the applicable quotation, Order Confirmation and any signed drawings; "Proprietary Information" means all intellectual property and information relating to the Goods, including designs, drawings, moulds, tooling, specifications, apaiserMarble® formulations, trade marks and trade secrets; "GST" has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and "Australian Consumer Law" means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

2 Quotations, orders and formation of contract

2.1 Quotations are valid for 30 days from issue unless otherwise stated, apply only to the quotation in which they appear, and are not an offer to sell.

2.2 A binding contract is formed only when apaiser receives the required deposit and/or issues an Order Confirmation. apaiser may accept or decline any order at its discretion.

2.3 The Agreement is the entire agreement between the parties and prevails over any terms proposed by the Customer (including on any purchase order), which shall have no effect notwithstanding any statement to the contrary. No variation is effective unless in writing and signed by apaiser.

2.4 The Customer must review all documentation (including Order Confirmations and drawings) and notify apaiser of any discrepancy, error or omission within 24 hours of receipt; the documents are otherwise deemed correct and approved, and production proceeds on them.

2.5 Where the price or availability of raw materials changes materially or supply becomes unavailable, apaiser may seek agreement to an adjusted price or terminate the affected order without liability, subject to payment for Goods already produced or in production and to a refund of any amount paid for Goods not yet in production.

3 Prices, taxes and payment

3.1 Payment is due in the currency stated on the Order Confirmation or invoice; all bank charges are the Customer's responsibility. All duties, taxes, customs and government charges of the destination are the Customer's responsibility unless expressly agreed in writing. Prices quoted to Consumers are shown as a single total price that includes GST. Prices quoted to trade and commercial customers are exclusive of GST unless stated, and GST is payable in addition where applicable.

3.2 Unless otherwise stated on the Order Confirmation, apaiser's standard terms apply: a 50% deposit on order, with the balance due prior to dispatch from the factory, on a per-shipment basis. Goods will not be dispatched until cleared payment of all sums then due.

3.3 The Customer must not withhold or set off any amount against sums due to apaiser for any reason.

3.4 apaiser may charge interest on overdue amounts at the rate fixed from time to time under the Penalty Interest Rates Act 1983 (Vic), calculated daily from the due date, together with all reasonable costs of recovery (including legal costs on an indemnity basis).

3.5 If the Customer has not paid for and taken delivery of the Goods within 90 days of notified readiness, apaiser may terminate the affected order and apply amounts paid against its costs, storage and losses (including loss of profit), accounting to the Customer for any balance.

4 Changes, cancellation and storage

4.1 Because the Goods are made to order, and subject to clause 10, the Customer may not cancel, withdraw or vary an order without apaiser's prior written consent. If apaiser consents, the Customer shall indemnify apaiser for all resulting loss and expense, including materials, tooling and moulds, labour, engineering, freight, supplier compensation and loss of profit.

4.2 If the Customer's program is delayed or the Customer is not ready to take delivery when the Goods are ready, apaiser may charge storage (notified by email), payable before dispatch, and delivery is deemed to have occurred for risk purposes.

5 Delivery and acceptance

5.1 Quoted production and delivery dates are estimates only, given in good faith. Time is not of the essence and, subject to clause 10, apaiser is not liable for any loss, penalty or damages arising from delay, however caused.

5.2 Unless otherwise stated, delivery is to loading dock or kerbside and excludes indoor delivery, uncrating and removal of packaging. For container deliveries the Customer is responsible for unloading, unstuffing and returning containers within free time; all demurrage, detention, wharf, drayage and similar charges are the Customer's responsibility.

5.3 apaiser may deliver by instalments and invoice each instalment. Non-payment of any amount entitles apaiser to withhold or suspend further production or delivery.

5.4 The Customer must inspect the packaging and Goods on delivery, note any damage on the carrier's proof of delivery, and notify apaiser in writing of any damage or defect within 48 hours of delivery, by email to service@apaiser.com. Wrongly supplied or over-supplied Goods must be notified within 7 days. Subject to clause 10, claims for transit damage or incorrect supply made outside these periods will not be considered, and the Goods are otherwise deemed accepted.

5.5 The Customer must inspect the Goods before installation. Subject to clause 10, apaiser has no liability for any damage or defect that a reasonable inspection would have revealed once the Goods have been installed or fixed in place, and Goods may not be returned without apaiser's prior written consent.

6 Risk and insurance

6.1 Risk in the Goods passes to the Customer on dispatch from apaiser's factory or warehouse (or, if earlier, when the Goods are made available for collection). Where apaiser arranges freight, it does so as the Customer's agent, and apaiser is not responsible for loss, damage or delay in third-party carriage.

6.2 From the passing of risk until title passes, the Customer must insure the Goods for their full value and holds any insurance proceeds on trust for apaiser to the extent of amounts owed.

7 Retention of title

7.1 Title to the Goods remains with apaiser until all amounts owing by the Customer to apaiser on any account have been paid in full. Until then the Customer holds the Goods as bailee, must store them separately and identifiably as apaiser's property, and may sell them only in the ordinary course of business as principal, holding the proceeds on trust for apaiser in a separate account to the extent of amounts owed.

7.2 If any amount is overdue, the Customer breaches the Agreement, or the Customer suffers an insolvency event, apaiser may terminate, suspend supply, and repossess the Goods, and the Customer irrevocably authorises apaiser to enter premises where the Goods are reasonably believed to be stored for that purpose, without liability.

7.3 These Terms constitute a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA") and create a purchase money security interest in favour of apaiser over the Goods and their proceeds. apaiser may register its security interest on the Personal Property Securities Register, and the Customer must sign any document and provide any information apaiser reasonably requires for that purpose. To the extent permitted by section 115 of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply, and the Customer waives its right to receive a verification statement under section 157. The Customer must pay apaiser's reasonable costs of registration and enforcement.

7.4 As further security for all amounts owing, the Customer charges in favour of apaiser all of its present and future interests in real property and consents to apaiser lodging a caveat noting that interest and will on request execute a registrable charge. This clause 7.4 does not apply where the Customer is an individual buying Goods for personal, domestic or household use.

8 Warranty

8.1 apaiser warrants the Goods to be free from defects in materials and workmanship in normal use for the following periods, each from the date of purchase: (a) baths, basins and integrated basins, 5 years for indoor installations; (b) shower trays, 3 years for indoor installations; (c) outdoor installations, 1 year; and (d) supplied wastes and plugs, 12 months. The warranty is personal to the original purchaser or first end user and is not transferable.

8.2 The Goods are handmade from natural and reconstituted stone. Variation in shade, colour, surface and markings is inherent and natural, does not affect structural integrity, and is not a defect. No warranty is given against crazing, scratching, chips or cracks after installation.

8.3 The warranty excludes damage from misuse, neglect, accident, improper installation, alteration, thermal shock, flames, unsuitable cleaning products (including those containing sulfamic acid or otherwise unsuitable for natural stone, which void the warranty), water impurities, atmospheric conditions, and any cause beyond apaiser's control. The costs of removal, reinstallation, access, labour, transport and other incidental expenses of a claim are borne by the Customer.

8.4 To claim under this warranty, the Customer must contact apaiser at service@apaiser.com within the warranty period, with proof of purchase, a description of the defect and photographs. apaiser (or its nominee) will assess the claim and, at its election, repair, replace (with a product of equal value) or adjust the Goods; this is the Customer's sole remedy for breach of this warranty, subject to clause 10. Repaired or replaced Goods carry the unexpired balance of the original warranty period. Goods in apaiser's custody for assessment are at the Customer's risk.

8.5 This warranty is given by apaiser Pty Ltd, 7/344 Burnley Street, Richmond VIC 3121, telephone (03) 94215722 , email service@apaiser.com. Its benefits are in addition to the Customer's other rights and remedies under a law in relation to the Goods. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9 Liability

9.1 Nothing in the Agreement excludes or limits liability for death or personal injury caused by negligence, for fraud, or for any liability that cannot lawfully be excluded or limited.

9.2 Subject to clause 9.1 and clause 10, apaiser is not liable (in contract, tort including negligence, statute or otherwise) for loss of profits, revenue, opportunity, goodwill, business or anticipated savings, or for any indirect, special or consequential loss, including water damage to floors, walls, carpets or ceilings; and apaiser's total aggregate liability under or in connection with each contract shall not exceed the price paid by the Customer for the Goods under that contract.

9.3 apaiser's liability is reduced to the extent the Customer's acts or omissions contributed to the loss.

10 Statutory rights

10.1 Nothing in the Agreement excludes, restricts or modifies any consumer guarantee, right or remedy under the Australian Consumer Law, or any other right that cannot lawfully be excluded, restricted or modified. Where the Goods are not of a kind ordinarily acquired for personal, domestic or household use, apaiser's liability for a failure to comply with a consumer guarantee is limited, to the extent permitted by section 64A of the Australian Consumer Law and at apaiser's option, to replacing the Goods or supplying equivalent goods, repairing the Goods, or paying the cost of doing so.

11 Intellectual property and confidentiality

11.1 All Proprietary Information, and all rights in it, are and remain the sole property of (or licensed to) apaiser, including any modification or development of it, whether or not paid for by the Customer. Bespoke designs, drawings, moulds and tooling created for an order remain apaiser's property unless expressly agreed otherwise in writing. The Customer must not copy, modify, reverse-engineer or permit reproduction of the Goods or apaiser's documentation.

11.2 apaiser's quotations, price lists and pricing are confidential to the Customer, are provided solely for the purpose of the proposed purchase and must not be disclosed to any third party without apaiser's prior written consent.

12 Force majeure

12.1 apaiser is not liable for any failure or delay caused directly or indirectly by events beyond its reasonable control, including act of God, war or armed conflict, civil commotion, epidemic, strikes or labour disputes, breakdown of machinery, inability to obtain raw materials or fuel, fire, flood, shipping or freight disruption, port congestion, or government action. Affected timeframes are extended accordingly.

13 Privacy and personal data

13.1 apaiser collects and uses personal information about the Customer and its personnel to process orders, arrange delivery, provide warranty service and manage accounts. It handles that information in accordance with its privacy policy and, where it applies, the Privacy Act 1988 (Cth). Personal information may be disclosed to apaiser's related companies, manufacturers and carriers, including in Singapore and Thailand, for those purposes.

14 General

14.1 The person placing an order warrants their full authority to bind the Customer and indemnifies apaiser against any loss arising from a lack of such authority. Where there is more than one Customer, liability is joint and several.

14.2 The version of these Terms current at the date an order is placed applies to that order. A failure or delay by apaiser to enforce a right is not a waiver, and waivers must be in writing. If any provision is unenforceable it is severed and the remainder continues in

force. The Customer may not assign the Agreement without apaiser's written consent; apaiser may assign to a related entity. Notices must be in writing to the addresses on the Order Confirmation and take effect on actual receipt (or, if posted, when they would arrive in the ordinary course). The Goods are supplied for use in Australia unless otherwise agreed, and any export or re-export is at the Customer's responsibility and must comply with applicable laws. A person who is not a party to the Agreement has no right to enforce any of its terms.

15 Governing law and jurisdiction

15.1 The Agreement is governed by and construed in accordance with the laws of the State of Victoria, Australia. The Customer irrevocably submits to the exclusive jurisdiction of the courts of the State of Victoria and the courts of appeal from them, save that apaiser may bring proceedings for the recovery of amounts due, or to protect its Goods or intellectual property, in any court of competent jurisdiction.

Safety note: never leave a filling or full bath or basin unattended.