



## STANDARD TERMS AND CONDITIONS

### 1. INTRODUCTION

- 1.1. Except where otherwise agreed to in writing, all transactions concluded between Marblecast and the Customer, including all notices sent to the Customer, shall be subject to these Terms and Conditions.
- 1.2. If the Customer is a juristic person as defined in the Consumer Protection Act, whose asset value or annual turnover exceeds R2 000 000.00 (two million rand), the Consumer Protection Act shall not apply to this Agreement.
- 1.3. If the Customer is a natural person or juristic person as defined in the Consumer Protection Act whose asset value or annual turnover is less than R2 000 000.00 (two million rand), the Consumer Protection Act shall apply to this Agreement to the extent that it is applicable to the supply of Products by Marblecast.
- 1.4. These Terms and Conditions constitute an agreement between the Customer and Marblecast.
- 1.5. **IMPORTANT TERMS WHICH MAY LIMIT MARBLECAST'S RESPONSIBILITY OR INVOLVE SOME FORM OF RISK FOR THE CUSTOMER ARE DISPLAYED IN BOLD FONT. THE CUSTOMER IS ADVISED TO PAY SPECIAL ATTENTION TO THESE TERMS.**

### 2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
  - 2.1.1. **"Agreement"** means this document, which includes the signed Quote, these Standard Terms and Conditions and any annexures, addenda, appendices and schedules attached hereto;
  - 2.1.2. **"Business Day"** means any day other than a Saturday, Sunday or official public holiday of South Africa;
  - 2.1.3. **"CPA"** means the Consumer Protection Act 68 of 2008, as amended from time to time, together with the Regulations thereto;
  - 2.1.4. **"Customer"** means the Party who purchases the Products from Marblecast on the terms set out in these Terms and Conditions and whose particulars are reflected on the Quote and includes the Customer's representatives;
  - 2.1.5. **"Delivery"** means delivery of the Products to the Customer or the collection of the Products by the Customer or the Customer's agent and will include delivery in part;
  - 2.1.6. **"Deposit"** means the amount to be paid as stated on the Quote;
  - 2.1.7. **"Marblecast"** means Marblecast (Pty) Ltd, a private company with Registration Number 2014/094093, with its principal place of business situated at 32 Section Road, Paarden Eiland, 7405, Cape Town;
  - 2.1.8. **"Order"** means the order placed for the Products by the Customer;
  - 2.1.9. **"Parties"** means Marblecast and the Customer and **"Party"** means either one of them;
  - 2.1.10. **"Products"** means the special order cultured marble sanitary ware products manufactured and supplied by Marblecast to the Customer for bathroom installations;
  - 2.1.11. **"Payment Due Date"** means the date on which payment by the Customer is due for the Products;
  - 2.1.12. **"Price"** means the price for the Products which the Customer owes to Marblecast as stated on the Quote which prices are inclusive of VAT and are quoted in South African Rand;
  - 2.1.13. **"Quote"** means the written quotation provided by Marblecast in respect of the Products which the Customer wishes to purchase;
  - 2.1.14. **"South Africa"** means the Republic of South Africa;

2.1.15. **"Special Order Products"** means the Products which Marblecast has to source, create or alter specifically to satisfy the requirements of the Customer.

- 2.2. In this Agreement, unless a contrary intention clearly appears:
  - 2.2.1. Clause headings have been inserted for convenience only and will not be taken into consideration in its interpretation;
  - 2.2.2. An expression which denotes:
    - 2.2.2.1. any gender includes the other genders;
    - 2.2.2.2. a natural person includes a juristic person and vice versa; and
    - 2.2.2.3. the singular include the plural and vice versa.
  - 2.2.3. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
  - 2.2.4. If any provision in clause 2 is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is contained in clause 2, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
  - 2.2.5. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
  - 2.2.6. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
  - 2.2.7. Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology industry will be interpreted in accordance with their generally accepted meanings.
  - 2.2.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
  - 2.2.9. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
  - 2.2.10. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
  - 2.2.11. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

### 3. QUOTE

- 3.1. **BY PLACING ANY ORDER WITH MARBLECAST OR BY REQUESTING ANY REPAIRS, ADDITIONS OR ALTERATIONS TO ANY PRODUCT THE CUSTOMER ACCEPTS THAT THE CUSTOMER IS BOUND BY THESE TERMS AND CONDITIONS.**
- 3.2. Marblecast will not be obliged to process the Customer's Order until the Deposit and a signed copy of the Quote is received from the Customer.
- 3.3. The prices on the Quote are valid for 14 (fourteen) days from the date of the Quote and Marblecast is not entitled to withdraw the Quote during that period.
- 3.4. If the Customer has not accepted the Quote or paid the Deposit within the abovementioned 14 (fourteen) day period, the Quote is automatically withdrawn and Marblecast do not have to notify the Customer of this.

- 3.5. The Price of the Products is based upon the information provided by the Customer and is subject to any changes requested by the Customer. Marblecast will inform and discuss with the Customer any changes to cost that may arise before proceeding with the manufacturing of the Products.

#### **4. DEPOSIT**

- 4.1. A Deposit of 50% (fifty percent) of the Purchase Price is payable to Marblecast within 2 (two) Business Days from written acceptance of the Quote by the Customer by way of electronic funds transfer into the bank account nominated by Marblecast, failing which this Agreement may be cancelled unilaterally by Marblecast.
- 4.2. The Customer agrees that Marblecast may use the Deposit in relation to the Order and the Customer shall not have any claim against Marblecast for interest or unjust enrichment or any similar claim in respect of the Deposit.

#### **5. PRICE, PAYMENT AND INTEREST**

- 5.1. The Price of the Products shall be stated in the Order provided to the Customer.
- 5.2. Should the Products be erroneously offered at incorrect prices, Marblecast will not be obliged to sell the Products at such incorrect prices but shall refund monies paid by the Customer should the Customer not wish to proceed with the purchase at the correct price.
- 5.3. The balance of the Price, the Delivery fee, if applicable, and interest, if any, owed to Marblecast must be paid without deduction or set off to the bank account nominated by Marblecast no later than 2 (two) Business Days before delivery of the Products.
- 5.4. A statement reflecting the amount due and owing by the Customer in respect of any Quote, or any other payment due, will be sufficient *prima facie* proof of the amount owed by the Customer.
- 5.5. Marblecast shall be entitled to suspend delivery of the Products until the balance of the Price and delivery charges, if any, have been settled in full.
- 5.6. **Unless otherwise agreed in writing, any amount not paid on Payment Due Date shall bear interest at a rate of 2% (two percent) per month from Payment Due Date until date of payment, both days included. Should the Customer fail to make any payment on Payment Due Date then all amounts owing by the Customer to Marblecast whether or not the date for payment has arrived, will immediately become due and payable by the Customer.**

#### **6. DELIVERY**

- 6.1. Marblecast will only deliver once the Customer has paid the balance of the Price, the Delivery fee and any interest, if applicable.
- 6.2. Delivery of Products is an additional service provided by Marblecast and will be charged for at rates provided to the Customer by Marblecast.
- 6.3. All delivery times are given in good faith by Marblecast. Marblecast will make every effort to effect delivery within the time quoted but late delivery shall not invalidate this Agreement.
- 6.4. **The Customer acknowledges that the Products are Special Order Products as defined and Marblecast will not be responsible for any failure to perform or any delay in performance or Delivery in terms of these Terms or Conditions due to matters beyond its control resulting from any cause beyond Marblecast's control, fire, labour difficulties, transportation difficulties, interruptions in power supply (including but not limited to what may be termed "load shedding" or "black-outs") and delays in usual sources of supply, major changes in economic conditions, breakdown of machinery or any cause beyond Marblecast's control, or whether caused by negligence or otherwise.**
- 6.5. If an event outside Marblecast's control takes place that affects the performance of its obligations under this Agreement:
- 6.5.1. Marblecast will contact the Customer as soon as reasonably possible to notify the Customer; and
- 6.5.2. Marblecast's obligations under this Agreement will be suspended and the time for performance of its obligations will be extended for the duration of the event outside its control. Where the event affects the delivery of the Products to the Customer, Marblecast will arrange a new delivery date with the Customer after the event is over.
- 6.6. The Customer shall notify Marblecast in writing of any claim for non-delivery of the Products in transit within 3 (three) days of due date of delivery. **Marblecast's liability in respect of any such claim does not extend to any indirect or consequential loss.**

- 6.7. Marblecast shall not be responsible for shortages when shipments are directed to a third party other than Customer.

#### **7. INSPECTION ON DELIVERY**

- 7.1. Marblecast makes no warranty, express or implied, for merchantability or fitness of the Products for a particular use or purpose.
- 7.2. When the Products are delivered to the Customer, and before using the Products, the Customer shall take reasonable steps to examine the Products for the purposes of ascertaining whether the Customer is satisfied that the Products:
- 7.2.1. correspond in all material respects and characteristics with samples and/or description;
- 7.2.2. reasonably conform to the material specifications of the special Order;
- 7.2.3. are suitable for the purpose for which they have been bought.
- 7.3. The Customer must inform Marblecast of any material defects by way of written notice to be received by Marblecast within 5 (five) Business Days of Delivery of the Products to the Customer.
- 7.4. **Should the Customer fail to notify Marblecast of any claim it may have in terms hereof within the specified 5 (five) Business Day period, the Customer will have waived its claim.**
- 7.5. The Customer or the person taking Delivery on behalf of the Customer will be required to sign proof of delivery (POD) and unless indicated to the contrary on the POD or reported in writing to Marblecast within 5 (five) Business Days of Delivery it is deemed that the Products have been delivered and received in good condition.

#### **8. PART AND SPLIT DELIVERIES**

- 8.1. Every Delivery, even if part Delivery, will be seen as a separate and divisible agreement subject to these Terms and Conditions.
- 8.2. The Customer's Order may result in Marblecast having to undertake multiple Deliveries to the Customer. Should this be necessary, Marblecast will not charge for the additional Delivery.

#### **9. PRODUCT SPECIFICATIONS**

- 9.1. **The Customer acknowledges and accepts that the process used in manufacturing the Products is partially expressed in individual intrinsic characteristics such as a degree of surface ripple, unevenness, dimples, miniscule black specks and pinholes and small variances in measurements. Any variances of up to 1% of the length, depth, width or thickness on any one side or any combination of sides are accepted as within tolerance.**
- 9.2. Marblecast warrants that the characteristics and capabilities of the Products will be substantially the same as advertised or displayed, but makes no other warranties or representation in terms of the Products.
- 9.3. The Customer must make sure of all measurements and sizes before ordering the Products.
- 9.4. Any measurements given by a Customer for final manufacturing of the Products must be in writing and signed by the Customer.
- 9.5. **Marblecast assumes no liability for incorrect dimensions supplied by the Customer and Marblecast will not replace or refund the Customer if the Products are not suitable for installation due to the incorrect dimensions supplied by the Customer.**
- 9.6. Marblecast is not responsible for any damages to the Products caused by:
- 9.6.1. Regular wear and tear to the Products;
- 9.6.2. Installation of the Products; and/or
- 9.6.3. The Customer's negligence, mishandling, disassembling or alteration of the Products.
- 9.7. **Under no circumstances will Marblecast accept claims or returns of Products which have been used, altered or modified in any manner.**
- 9.8. The Customer accepts that Marblecast will not be held responsible for any vanity that does not fit on any cabinets or frames which are not supplied by Marblecast.

#### **10. GENERAL CARE**

- 10.1. The Products are to be used for the purpose and in the manner for which they were designed. The care and maintenance advice supplied with the Products must be read and followed. **Marblecast will accept no responsibility for any damages caused by cleaning if the care and maintenance instructions have not been followed.**

#### **11. OWNERSHIP AND RISK**

- 11.1. Marblecast shall retain absolute legal and beneficial ownership of the Products until the Price, Delivery fee, if applicable and interest,

if any, have been paid in full. The Customer shall ensure that the Products will not become subject of alienation or seizure.

**11.2. Risk in the Products shall pass to the Customer in the following circumstances:**

- 11.2.1. Where Marblecast arranges delivery of the Products, when the Products are loaded onto a vehicle at Marblecast Premises, or
- 11.2.2. 4 (four) days after Marblecast notifies the Customer that the Products are ready for collection; or
- 11.2.3. Upon the Customer's refusal to take delivery for any reason whatsoever.

**12. CANCELLATION, RETURN, REPAIRS AND REFUNDS**

- 12.1. The Products which have been made to order have been produced specifically for the Customer, therefore no refunds, exchanges or alterations will be made from the date on which the Customer places its Order, unless there is an error on Marblecast's part regarding the product specification or the Products are found to have a material fault.
- 12.2. Marblecast warrants that the Products will be free from material defects and will be of the quality a Customer would reasonably be entitled to expect from Special Order Products.
- 12.3. If the Customer wishes to return the Products due to a material product failure or material defect the Customer must do so within 6 (six) months of the date of purchase provided that the Customer is able to provide proof of payment. Marblecast will at their own discretion repair or replace the Products, or refund the amount paid for the Products.
- 12.4. Marblecast's liability in respect of any material defect in the Products howsoever it may arise, shall not in any case exceed the value of the work forming the subject of the claim.

**13. ADDITIONAL PROVISIONS IN RESPECT OF SPECIAL ORDER PRODUCTS**

- 13.1. The Products are Special Order Products which are made to the Customer's exact specifications and the Customer is not allowed to return them in terms of the CPA. The Customer must ensure that the measurements of the openings into which the Special Order Products are to be installed are correct to ensure that the Customer orders the correct item or size.
- 13.2. Please be aware that the Customer's right to cancel an advance order in terms of section 17 and the provisions of overselling and overbooking in terms of section 47 of the CPA do not apply to Special Order Products and the Customer is not entitled to cancel other than when Marblecast materially breaches this Agreement.
- 13.3. Orders placed are irrevocable once production on such orders has begun
- 13.4. The Customer will not be entitled to return the Products and receive a refund if, after having been supplied to the Customer, the Products have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within other Products or property.
- 13.5. In the event of Marblecast agreeing to refund monies paid either prior to or post Delivery due to circumstances unrelated to product quality or Lead Times, the Customer will be liable for a reasonable cancellation fee calculated on the Price of the Special Order Products which Marblecast reserves the right to subtract from the Deposit.

**14. CANCELLING OF YOUR ORDER BY MARBLECAST**

- 14.1. Marblecast reserves the right to cancel the Customer's Order if conditions affecting Marblecast obtaining the Products change or local market conditions change and the Customer has no claim for any direct or indirect damages the Customer suffers as a result.
- 14.2. The Customer's claim for cancellation will be limited to a refund of the Deposit paid.

**15. WARRANTY**

- 15.1. Subject to these Terms and Conditions, the Products carry an implied warranty in accordance with the CPA which gives the Customer the right to return unsafe and defective Products in terms of section 20 read with section 56 of the CPA.

- 15.2. Marblecast's Products also carry a manufacturers' warranty for a period of 12 (twelve) months from the date of Delivery in respect of faulty workmanship or defective materials, which will run concurrently with any warranty in terms of the law.

**16. TERMINATION**

- 16.1. The Customer will be in default of this Agreement if:
  - 16.1.1. The Customer does not pay any amount payable to Marblecast under this Agreement on due date; or
  - 16.1.2. The Customer breaches any of the terms of this Agreement and the Customer fails to remedy the breach within 7 (seven) days of receiving written notice to do so; or
  - 16.1.3. Any representation or warranty made in connection with this Agreement or any other documents supplied by the Customer is materially incorrect or false; or
  - 16.1.4. The Customer, being an individual:
    - 16.1.4.1. publishes notice of the voluntary surrender of his estate or dies;
    - 16.1.4.2. Is placed under administration or commits an act of insolvency as defined in the Insolvency Act 24 of 1936;
    - 16.1.4.3. has any application or other proceedings brought against or in respect of him in terms of which he is sought to be sequestered or placed under curatorship, in any event whether provisionally or finally and whether voluntarily or compulsory;
  - 16.1.5. The Customer, not being an individual:
    - 16.1.5.1. is wound up, liquidated, dissolved or deregistered, whether provisionally or finally and whether voluntarily or compulsory, or passes a resolution providing for any such event;
    - 16.1.5.2. is deemed to be unable to pay its debts;
    - 16.1.5.3. resolves that it begin business rescue proceedings or has any business rescue proceedings commenced against it;
    - 16.1.5.4. has a judgment of a competent court against the Customer for the attachment of assets or for payment of any amount is not satisfied for more than 7 (seven) days after the date on which it is issued; or
    - 16.1.5.5. compromises or attempts to compromise with its creditors generally or defer payment of debts owing by the Customer to the Customer's creditors.
- 16.2. Marblecast may exercise its rights, as may be permissible in law and without prejudice to any of Marblecast's other rights, which include any one or more of the following:
  - 16.2.1. suspending the delivery and provision of Products;
  - 16.2.2. demanding immediate payment of overdue amounts; and
  - 16.2.3. terminating this Agreement
- 16.3. The customer will be liable for all legal costs on the attorney and own client scale and cost of counsel on the bar counsel tariff, collection commission, tracing fees and VAT incurred by Marblecast in recovering any amount that the customer owes Marblecast.

**17. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 17.1. The Customer indemnifies Marblecast against liability (including the cost of instituting and/or defending unsuccessful actions) arising as a result of Marblecast's supplying of Products in accordance with the Customer's specifications or instructions, which infringe or are alleged to infringe any patent, or other industrial property rights or other proprietary right of any third party.
- 17.2. Marblecast warrants that, so far as Marblecast is aware, the Products do not infringe the copyright, patent, registered design or similar industrial property right of any third party, but the Customer shall be solely responsible for ensuring that any Products, documents or information Marblecast supplies can be used or operate without infringing such rights.
- 17.3. Any documents, designs, specifications and other information which Marblecast supplies remains the property of Marblecast and are confidential and are not to be disclosed to third parties and none of them may be copied without Marblecast's express written permission.
- 17.4. The Customer shall not remove or tamper with any trademarks, numbers or other means of identification that has been used by Marblecast on or in relation to the Products.

## 18. ADDRESSES FOR NOTICES AND LEGAL PROCESS

- 18.1. The Customer chooses as the Customer's domicilium citandi et executandi ("domicile address") for all purposes the physical address set out in the Quote or Order. The Customer authorises Marblecast to deliver notices, statements or invoices by hand, e-mail, facsimile or post to the addresses provided.
- 18.2. Any Notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by email.
- 18.3. Any Party may by Notice to the other Party, change its Chosen Address to another physical address or email address, provided that the change shall only become effective on the 7<sup>th</sup> (seventh) day of receipt (or deemed receipt) of the Notice by the other Party.
- 18.4. Any Notice:
- 18.4.1. delivered by hand to a responsible person during ordinary business hours at his Chosen Address, shall be deemed to have been received on the day of delivery;
- 18.4.1. if sent by prepaid registered post from within South Africa, be deemed to have been received within 5 (five) days of posting, unless the contrary can be proven;
- 18.4.2. sent by email to his Chosen Address, shall be deemed to have been received on the date of dispatch and at the time recorded by the computer/device used by the sender of the email (unless the contrary is proven).
- 18.5. Notwithstanding anything to the contrary herein contained, a Notice actually received by a Party shall be an adequate written notice or communication to him notwithstanding that it was not sent to or delivered at his Chosen Address.

## 19. GOVERNING LAW

- 19.1. This Agreement will in all respects be governed by and construed in accordance with the laws of South Africa.

## 20. JURISDICTION

- 20.1. In terms of Section 45 of the Magistrates' Courts Act 32 of 1944, as amended, the Customer consents to the jurisdiction of the Magistrate's Court in the area in which the Customer resides or works or has its principal place of business notwithstanding the amount involved. This does not prevent Marblecast from bringing legal proceedings in a High Court that has jurisdiction.

## 21. GENERAL

- 21.1. Whole Agreement. This Agreement (these Terms and Conditions together with the Quote and/or Order and any annexures, addenda, schedules and appendices attached hereto) constitutes the whole agreement between the Parties relating to the matters dealt with in this Agreement and save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.
- 21.2. Non Variation. No variation, addition, deletion, or agreed cancellation of this Agreement will be of any force or effect unless in writing and signed by or on behalf of the Parties hereto.
- 21.3. No Waiver. No waiver of any of this Agreement will be binding or effectual for any purpose unless in writing and signed by or on behalf of the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 21.4. Severability. Each provision of this Agreement is severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this Agreement. The remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.
- 21.5. No Cession or Assignment. Save as otherwise herein provided, neither these Terms and Conditions nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred by the Customer without Marblecast's prior written consent.

## 22. DECLARATIONS AND WARRANTIES BY THE CUSTOMER

- 22.1. The Customer warrants and declares that:
- 22.1.1. The Customer has been given an adequate opportunity to read and understand these **Terms and Conditions** and is aware of all these **Terms and Conditions**, particularly those printed in bold. The Customer understands and accepts its risks and costs as well as its rights under these Terms and Conditions;
- 22.1.2. The Customer has full power and authorisation to effect and carry out the obligations in terms of this Agreement and, if the Customer is a corporate entity, association, partnership or a trust, that all necessary resolutions were passed and all corporate and/or other actions were taken to authorise the execution of this Agreement and the Customer will provide Marblecast with the originals or certified copies of all documents confirming such authorisation;
- 22.1.3. All the information the Customer has provided to Marblecast in connection with the conclusion of this Agreement is true, complete and accurate and the Customer is not aware of any material facts or circumstances not disclosed to Marblecast and which, if disclosed, may adversely affect the decision to enter into this Agreement;
- 22.1.4. The Customer has fully and truthfully answered all and any requests for information addressed to it by or on behalf of Marblecast leading up to the conclusion of this Agreement;
- 22.1.5. The Customer has the necessary legal capacity to enter into this Agreement and is not subject to an administration order referred to in section 74(1) of the Magistrates Court Act, any sequestration, liquidation or judicial management order or any business rescue proceedings;
- 22.1.6. Marblecast has not induced, harassed or forced the Customer to enter into this Agreement.
- 22.1.7. This Agreement was completed in full at the time of the Customer signing these Terms and Conditions.

