

TERMS OF TRADE

PLEASE READ THESE TERMS CAREFULLY AS THEY ARE THE BASIS ON WHICH A CONTRACT IS FORMED BETWEEN YOU AND LUMP SCULPTURE STUDIO IN RESPECT OF YOUR ORDER.

The following Terms of Trade ('**Terms**') apply to all products and services provided by Lump Sculpture Studio Pty Ltd ('**we**', '**us**') to you ('**you**', the '**Customer**').

By paying a Deposit in accordance with these Terms, you are agreeing to these Terms and entering into a contract with Lump Sculpture Studio.

In particular you are agreeing that:

- Any item you commission us to create for you remains our property until you have paid for the item in full.
- We own all intellectual property rights, including copyright, in our designs. All designs, drawings, sketches, images and documents supplied by us remain our property.

1 Terms of Trade

- These Terms set out the terms and conditions on which Lump Sculpture Studio may provide products and services to you. These Terms should be read together with the Quotation and the Care and Warranty Policy.
- We may change these Terms from time to time by posting new terms on our Website. Any amended terms will apply to any subsequent contract entered into with us, but will not affect a contract already entered into.
- These Terms are current as at June 2023.

2 Quotation

- We will provide you with a written Quotation outlining the specifications for the Sculpture(s), the Price (including our costs and any design fees), details of items we will and will not provide and any Purchaser Supplied Items. The Quotation also contains our payment terms.
- The Quotation is our offer to supply the Sculpture(s) specified in the Quotation to you. You are responsible for ensuring all aspects and details of the Quotation are correct prior to accepting the Quotation. By accepting the Quotation and paying the Deposit you approve the Sculpture(s) for fabrication on these Terms. Any alterations to the Quotation prior to acceptance must be in writing and agreed to by both parties.
- Quotation prices are valid for 30 days from the date we submit the Quotation to you. If you have not accepted the Quotation within 30 days:
 - you cannot accept the Quotation unless we agree in writing that the Quotation remains valid for acceptance; and
 - we reserve the right to adjust the prices in the Quotation by issuing a new Quotation to you, including to accommodate changes to trade or supplier costs.
- To accept our offer, you must pay the Deposit specified in the Quotation. On payment of the Deposit a binding contract will be formed between you and Lump

Sculpture Studio consisting of the Quotation, these Terms and the Care and Warranty Policy.

- If there is any inconsistency between the Quotation and these Terms, the Quotation will prevail to the extent of the inconsistency.

3 Price and payment

3.1 Price

- The price for the Sculpture(s) (excluding any subsequent agreed variations) ('**Price**') is set out in the Quotation. Unless otherwise stated the price is inclusive of GST.
- The Price is based on our current pricing structure informed by our Site visit (if applicable) and the design of the relevant Sculpture.
- Delivery, freight, installation and associated costs are itemised in the Quotation as separate costs and may form part of the Price in the Quotation.

3.2 Payment and approval stages

- You agree to pay the Price as follows (unless specifically stated otherwise in the Quotation):
 - Deposit:** a first instalment of **50% of the Price** upon acceptance of the Quotation. Your Payment of the Deposit confirms your order for the Sculpture(s) in our production planning. On receipt of the Deposit we will submit a production drawing of your Sculpture(s) to you for approval. On receipt of your approval we will begin fabrication of your Sculpture(s).
 - Completion Payment:** We will notify you when the Sculpture(s) is completed at our factory. You agree to pay the **remaining 50% of the Price** in accordance with the payment terms in the Quotation, prior to the Sculpture(s) being released for despatch.
- Failure to pay the Completion Payment when due may result in additional costs, including storage charges, and delays to delivery timeframes.

3.3 3-Day Cancellation Period

- (a) You may cancel your order and withdraw from your contract with us within 3 Business Days from the date you pay the Deposit.
- (b) If you choose to cancel your order within the 3 Business Day cancellation period we will refund your Deposit, however, we may retain a cancellation fee of up to 20% of the Deposit to reflect our design costs incurred up to the date of cancellation.
- (c) You acknowledge and agree that if you wish to cancel your order outside of the 3 Business Day cancellation period, we are entitled to retain the Deposit.

3.4 Title

All Sculpture(s) produced and supplied by us remain the property of Lump Sculpture Studio until you have paid for them in full in accordance with the Quotation and these Terms.

3.5 Failure or delay in making payments

If you do not make payments of the Price in accordance with the Quotation accepted by you by the due date it will be a breach of this agreement. If you do not remedy such breach within 10 Business Days of us notifying you of the breach, we reserve the right to terminate our contract with you, or delay providing our services under this contract, at our election. In such circumstances, we reserve the right to retain the Deposit.

4 Variations

- (a) Any proposed variations to the Quotation or supply of the Sculpture(s) must be submitted by you in writing. We will notify you in writing if the requested variation affects the price of the Sculpture(s) or its estimated completion date. Any variations (including revised pricing) agreed between the parties will be documented in writing.
- (b) Any agreed variations to the Quotation after you have paid the Deposit:
 - (1) must be paid upfront and in full;
 - (2) will be priced by reference to our applicable rates and costs, including any additional design fees and any indirect costs due to revised delivery dates; and
 - (3) will incur a processing fee, which is dependent on the nature of the variation, as notified to you prior to the parties agreeing the variation.
- (c) You acknowledge that requesting or agreeing variations with us may cause delays to the manufacturing and delivery timelines for the Sculpture(s).

5 Design and manufacture

- (a) Once we receive your approval of the production drawing referred to in clause 3.2(a)(1), and the 3 Business Day cancellation period referred to in clause 3.3(a,) has expired, we will commence production and fabrication of the Sculpture(s) specified in the Quotation.
- (b) You must provide us with all relevant documentation, specifications and requirements relevant to:
 - (1) the Site;
 - (2) the suitability or construction of the Sculpture(s) for the Site; and

- (3) the installation of the Sculpture(s) at the Site (including access to the Site).

If the information provided to us prior to fabrication or installation of the Sculpture(s) (as applicable) is incorrect or incomplete, you agree to pay any reasonable additional costs incurred by us as a result of required amendments to the Sculpture(s) and refitting or reinstalling the Sculpture(s) at the Site (including at a later date).

- (c) We reserve the right to use the services of sub-contractors, agents and suppliers in the design and manufacture of the Sculpture(s).

6 Commissioned Items

- (a) If you, or a third party at your request (such as an architect, builder or another designer), provides the complete design and specifications for a Sculpture (a **Commissioned Item**), we will manufacture the Commissioned Item to those specifications, subject to the remainder of this clause 6.
- (b) To the extent permitted by law, including the Australian Consumer Law, we:
 - (1) are not responsible for ensuring a Commissioned Item complies with property, building or compliance regulations;
 - (2) are not responsible for delays caused or contributed to by third parties (architect/ builder/ designer etc), including through lack of communication with us; and
 - (3) do not guarantee delivery timelines for Commissioned Item(s) which require ongoing third party design input (architect/ builder/ designer etc).
- (c) Any warranty under our Warranty and Care Policy does not apply to Commissioned Items.
- (d) You acknowledge and agree:
 - (1) you are responsible for all third party design costs for a Commissioned Item;
 - (2) you are responsible for managing third party design input of a Commissioned Item;
 - (3) Clause 4 will apply to any variations (including price adjustments) of Commissioned Items.

7 Purchaser Supplied Items

- (a) If any Purchaser Supplied Items are specified in the Quotation, you are responsible for the procurement, payment, and timely supply of all such Purchaser Supplied Items.
- (b) To enable supply and installation of the Sculpture(s), you must provide us with exact measurements and/or dimensions of any Purchaser Supplied Items in writing within the timeframes specified by us.
- (c) You are responsible for ensuring any Purchaser Supplied Items, including but not limited to all footings, substrates, hardware, and any additions, are of sound condition and meet the requirements and specifications for the project.
- (d) We are not liable for any loss, delay or damage caused by incorrect or unsuitable Purchaser Supplied Items, including any costs involved with the return, reconfiguration, and consequent redelivery or reinstallation of any Sculpture(s).

8 Delivery and risk

8.1 Delivery date

- (a) We will consult with you regarding a delivery date and/or installation date as fabrication of the Sculpture(s) reaches completion.
- (b) Once the Sculpture(s) are ready to be delivered you may request to inspect them at our factory prior to delivery. Please contact us to arrange inspection.
- (c) Any delivery date agreed with you is an estimate only. We do not guarantee delivery on any particular date. Any proposed delivery date may be affected by a delay in receipt of payment from you or failure by you (or your contractor/ architect / designer or builder) to obtain relevant consents, approvals and access rights, product curing times, machinery/ vehicular breakdowns and other matters outside our control including where we use third party delivery providers.
- (d) Delivery will be made when the Sculpture(s) arrive at the Site, whether in one or more instalments.

8.2 No liability for late or non-delivery

To the extent permitted by law, we will not be liable for losses arising from delay in delivery or failure to deliver any Sculpture(s) on the proposed delivery date, and you must accept and pay for the Sculpture(s) specified in the Quotation notwithstanding late delivery. This does not exclude any applicable consumer guarantee under the ACL.

8.3 Incomplete delivery

- (a) You acknowledge and agree you (or your agent) will be able, willing and available to accept delivery of the Sculpture(s) on the agreed delivery date, whether in whole or in part.
- (b) If you (or your agent) do not accept delivery of the Sculpture(s) on the agreed delivery date (for whatever reason), we may return the Sculpture(s) to our factory studio and we may charge you a storage fee for each Sculpture calculated at our daily storage rate (currently **\$100-\$300 including GST per day** depending on the cubic meter volume of your Sculpture), until such time as rescheduled delivery can take place. We agree we may also charge you redelivery fees.

8.4 Risk

- (a) Risk in the Sculpture(s) transfers to you on delivery at the Site (whether installed or uninstalled). This includes risk of third party damage (including by other contractors on Site).
- (b) You are responsible for ensuring you have appropriate insurance cover in place for the Sculpture on and from delivery.
- (c) In the event of theft, fire or other loss or damage to a Sculpture prior to delivery due to any reason beyond our reasonable control, we will work with you to mutually agree how to proceed either with completion of the Quotation, or mutually agreed cancellation. Unless we agree otherwise, we will not be obliged to deliver the Sculpture in such circumstances, and our liability for loss or damage (however caused) to you in respect of any failure to deliver that Sculpture in accordance with this agreement will be limited to refund of the Price paid in respect of that Sculpture.
- (d) Neither party is liable to the other party for any direct or indirect lost profit or revenue or other indirect or consequential loss or damage, including as a result of delayed or incomplete delivery.

9 Installation

9.1 Site readiness

- (a) Unless specified in the Quotation you are responsible for:
 - (1) all planning, building and other consents and permits required for installation of the Sculpture(s);
 - (2) providing the Site as ready for delivery and/or installation of the Sculpture(s); and
 - (3) co-ordinating all other work and contractors on Site (if any);
 - (4) covering or otherwise protecting floors, walls, doors, or other chattels prior to delivery and/or installation of the Sculpture(s) (for example, floor coverings, ram boards, drop sheets etc).
- (b) You must:
 - (1) make the Site ready for delivery and installation of the Sculpture(s) at the delivery date agreed with you pursuant to clause 8.1(a); and
 - (2) ensure the Site is ready for delivery and installation clear from obstructions, building materials and debris prior to installation.

Failure to do so may result in us being unable to deliver and/or install the Sculpture(s) on the proposed delivery date. If we determine the Sculpture(s) cannot safely be delivered and/or installed, we may return the Sculpture(s) to our factory until rescheduled delivery / installation can be arranged, and clause 8.3(b) will apply in respect of any storage costs prior to redelivery.

- (c) You acknowledge and agree we may charge you reasonable additional fees for any redelivery and/or rescheduled installation required as a result of Site unpreparedness on the proposed delivery date.

9.2 Installation

- (a) Unless specifically set out in the Quotation, we are not responsible for plumbing, electrical work, footings, substrates, or any other construction work including the removal of any obstructions from the Site. You must remove those items and other obstructions from the Site and surrounding area(s) prior to the anticipated delivery date unless otherwise outlined in the Quotation.
- (b) If any additional works (which are within our capability but outside our scope of work in the Quotation) ('**Additional Works**') are required to remedy any issues that impede installation of the Sculpture(s) at the Site, and we agree to carry out such Additional Works, you agree that we can charge you for such Additional Works at our then current rates as included in the Quotation or otherwise communicated to you prior to us agreeing to undertake any Additional Works.
- (c) We will not be liable for any damage:
 - (1) caused as a result of the Site not being cleared of obstructions including building supplies, landscaping equipment and debris;
 - (2) caused to the Sculpture(s) by any other contractors on Site, except to the extent we contributed to such damage; or
 - (3) caused as a result of moving goods under your instructions (where moving such goods in the manner instructed is likely to cause damage),except to the extent caused by our negligent act or omission.

9.3 Occupational health and safety

Lump Sculpture Studio and you will each be responsible for our respective obligations under applicable workplace health and safety laws including the *Occupational Health and Safety Act 2004* (Vic) ('OHS') and ensure that our workers and officers as defined in the OHS comply with their obligations under the OHS. To the extent that you may have any such responsibilities, so far as is reasonably practicable, you must eliminate or minimise risks to health and safety in respect of the Site.

9.4 Site visits

- (a) If you require Lump Sculpture Studio or its employees to make additional Site visits these will incur a cost of \$276 including GST per Site visit (Melbourne metro only). Visits to Sites located further than 120km from our studio will incur an additional fee billed based on the location. We will notify you of such fee in advance of confirming any Site visit.
- (b) We do not charge for Site visits for any initial consultation, site measure, delivery, install/s and/or defect identifications/correction.

9.5 Inspection and damage

- (a) You must inspect the Sculpture(s) as soon as possible after delivery.
- (b) You agree to notify us in writing (or in the case of minor problem by phone) of any:
 - (1) alleged damage or failure to comply with the Quotation within 2 Business Days of delivery; or
 - (2) alleged functional problem within 7 Business Days of delivery.
- (c) If you notify us under clause 9.5(b) you will give us an opportunity to inspect the Sculpture(s) within a reasonable time frame.
- (d) The remainder of this clause 9.5 does not apply to the extent you are a 'Consumer' under the Australian Consumer Law. If you do not notify us of any alleged shortage in quantity, damage or failure to comply with description in the Quotation in accordance with clause 9.5(b), you will be deemed to have accepted the Sculpture(s).

10 Australian Consumer Law

- (a) This clause 10 only applies if you are considered to be a 'Consumer' under the ACL.
- (b) Nothing in these Terms prevents the application of the consumer guarantees to these Terms under the ACL.
- (c) To the extent you have the benefit of consumer guarantees under the ACL in respect of the supply of goods or services under these Terms, and the goods and services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for breach of a consumer guarantee (other than under sections 51, 52 and 53 of the ACL) is limited as follows:
 - (1) our liability in relation to goods is limited (at our option) to the replacement of goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired; and

- (2) our liability in relation to services is limited (at our option) to the supply of the goods again, or the payment of the cost of having those services supplied again.

11 Quality and warranties

11.1 Our quality commitment

Unless otherwise specified in the Quotation, and without limiting your rights under the ACL, we will supply the Sculpture(s) and provide installation services to you as follows:

- (a) in respect of all third party supplied components of the Sculpture(s) (such as electrical components and hardware) in accordance with the manufacturer's or supplier's warranties, if transferable or assignable to you;
- (b) in respect of the Sculpture(s), in accordance with our Care and Warranty Policy; and
- (c) in respect of the ancillary installation services for the Sculpture(s), that they will be carried out with reasonable skill and care.

11.2 Customer acknowledgements

You acknowledge:

- (a) Corten steel, steel, aluminium, copper, brass, stainless steel and other source materials for Sculpture(s) are natural materials and will have variations in colour, grain, texture and shade. Any natural variations in source materials for the Sculpture(s) are not defects and do not give you a right to terminate your contract with us, or limit your obligation to make payments in accordance with these Terms;
- (b) Corten steel, steel, aluminium, copper, brass, stainless steel and other source materials are affected by exposure to light, heat and harsh chemicals. They may also be affected by moisture and seasonal changes in humidity. Natural materials may contract (shrink) in low humidity and expand in high humidity conditions;
- (c) Finished applied to the Sculpture(s) (including powder coated finishes, patinas and painted finishes) will be affected by environmental conditions including natural and artificial light and heat sources. Over time, finishes will darken, fade or mellow as a result of environmental factors outside of our control;
- (d) As materials used in the Sculpture(s) age, expand and contract over time, the Sculpture(s) may develop hairline cracks in the finish surfaces and at the joints. These are natural characteristics of the materials used and are not considered defects, failures or damage to the Sculpture; and
- (e) Site access and doorways will affect the size of materials used in the fabrication of a Sculpture, and as a result a Sculpture may need to be fabricated in sections. Any marks created during the process of joining sections are not considered defects, failures or damage to the Sculpture.

11.3 Samples

You acknowledge that any samples of components or materials for the Sculpture(s) shown to or inspected by you are intended as a guide to the completed item only, and our supply is not a sale by sample.

12 Intellectual property

- (a) All intellectual property rights, including copyright, in designs, drawings, sketches, images, text, information,

logos or documents created by Lump Sculpture Studio is and remains the property of Lump Sculpture Studio.

- (b) If you contract with us to produce a Sculpture for you by agreeing to these Terms, you hereby assign to us all intellectual property rights, including any copyright, you may have in the Sculpture and the design or concept for that Sculpture. This clause does not apply to Commissioned Items under clause 6.
- (c) Other than for Commissioned Items, all designs, drawings, sketches, images, and documents exchanged between you and us remain the property of Lump Sculpture Studio. You must not:
- (1) reproduce or create any further copies of the Sculpture (or engage a third party to do so); or
 - (2) reproduce, copy, duplicate any such designs, drawings, sketches, images or documents, or provide them to a third party,
- in each case without our prior written consent.
- (d) Unless otherwise stated in the Quotation, we do not guarantee the design for any Sculpture will be unique or exclusive to you. We may fabricate and supply products to other customers using the same or similar designs.
- (e) For Sculptures we have designed, we will indemnify you against any third party claim that the Sculpture infringes the intellectual property rights of that third party.
- (f) If you, or a third party at your request (such as an architect, builder or another designer), provides the design, drawing, image or instructions for a Commissioned Item, you must ensure that our use of such design, drawing, image or instructions to produce the Commissioned Item does not infringe the intellectual property rights of any third party. plan

13 Photography

You agree Lump Sculpture Studio may photograph the completed Sculpture(s) at the Site, including during the delivery and install stages, and may use such photographs in Lump Sculpture Studio's promotional and/or advertising material from time to time.

14 General

- (a) These Terms are governed by the laws of Victoria, Australia. The parties agree to submit to the non-exclusive jurisdiction of courts of Victoria, Australia.
- (b) These Terms together with the Quotation and the Care and Warranty Policy state all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- (c) Any failure by Lump Sculpture Studio to enforce any provision of these Terms will not be treated as a waiver, nor will it affect Lump Sculpture Studio's right to subsequently enforce that provision.
- (d) If any provisions of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.
- (e) Specifying anything in these Terms after the words 'include' or 'for example' does not limit what else is included.

15 Definitions

Term	Meaning
Australian Consumer Law or ACL	Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth).
Business Day	a day on which banks are open for business in Melbourne, Australia, other than a Saturday, Sunday or public holiday in Melbourne, Australia.
Care and Warranty Policy	Lump Sculpture Studio's policy document titled "Care & Warranty".
Commissioned Item	has the meaning given in clause 6(a) and refers to a Sculpture where the design is created by a third party, not by Lump Sculpture Studio.
Completion Payment	the second instalment of the Price payable under these Terms.
Deposit	the first instalment of the Price payable under these Terms.
Sculpture	any object, sculpture, decorative item, metal work, screen, planter, pot, bowl, wall hanging, light, fire pit, artwork, letterbox, decorative screen, cladding or any other object we agree to provide you in a Quotation, including but not limited to integrated hardware and electrical lighting and other components described in the Quotation but does not include any Purchaser Supplied Item.
Customer or you	the person(s) or entity referred to in our Quotation as our customer or client.
Lump Sculpture Studio, us or we	Lump Sculpture Studio Pty Ltd (ABN 118 584 151).
Price	has the meaning given in clause 3.1(a).
Purchaser Supplied Items	items to be provided by the Customer as described in the Quotation, including but not limited to footings, substrates, hardware, plumbing and electrical equipment.
Quotation	the quotation for the supply and/or installation of a Sculpture or any other requirement we have agreed to carry out for you.
Site	the physical premises where the Sculpture is to be delivered and/or installed, and includes all access ways (as required).
Website	www.lump.com.au