

## GENERAL TERMS AND CONDITIONS OF SALE

New Zealand

1. **Terms of Sale:** These General Terms and Conditions of Sale ("Terms"), as amended from time to time by us, govern all future supplies of goods by us to you.
2. **Pricelist:** This pricelist will replace all previous ones. All prices are in EURO, ex factory Italy, without VAT and MAY CHANGE WITHOUT ANY ADVANCE NOTICE.
3. **Purchase orders:** Purchase orders represent an 'irrevocable proposal to buy'. We shall not accept terms and conditions of purchase that are inconsistent with our own Terms.
4. **Shipment:** The goods shall travel on account and at the risk of the customer, including those goods delivered free of carriage. Seller accepts no liability for any damage, accidents or loss occurring during carriage, nor for the duration thereof.
5. **Retention of title:** The goods shall remain the sole and absolute property of seller until they have been fully and accurately paid for regardless of whether they are the subject of transformation, comingling or deposit of the goods with third parties. Goods sold to third parties by buyer shall also be subject to this retention of title clause and buyer shall hold the proceeds of sale of such goods on trust for seller.
6. **Personal Property Securities Act 1999 ("PPSA")**  
In this clause, the terms "after-acquired property", "at risk", "inventory" "perfected", "proceeds" "purchase money security interest", "rights", "security interest" and "sell" have the respective meanings given to them under, or in the context of, the PPSA.
  - 6.1 The Customer grants a security interest to seller in each and every part of the goods as security for payment of that part and of each other part or parts of the goods and for any other amounts owing by the Customer to seller from time to time, and for the performance by the Customer of all the Customer's other obligations to seller from time to time, ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for seller by virtue of section 36 (1)(b)(iii) of the PPSA, seller confirms and agrees that the Customer intends to and does grant to seller, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):
    - (a) in or to which the Customer has rights; and
    - (b) which has not been supplied by seller to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the seller to the Customer..
  - 6.2 While the goods continue to secure the Customer's indebtedness and obligations the Customer must store the goods separately and clearly identify the goods as belonging to seller.
  - 6.3 Seller authorises the Customer in the ordinary course of the Customer's, business to use or sell for full consideration any goods that are comprised in the Customer's inventory. This authority is revoked from the time that:
    - (a) an Event of Default occurs; or
    - (b) seller notifies the Customer in writing that this authority is revoked. For the purposes of these Terms, "Event of Default" means an event where:
      - (a) the Customer fails to comply with the terms of the Contract or any other contract with Lion; or
      - (b) any of the Goods are at risk; or
      - (c) the Customer commits an act of bankruptcy; or
      - (d) the Customer enters into any composition or arrangement with its creditors; or
      - (e) if the Customer is a company:
        - (i) the Customer does anything which would make it liable to be put into liquidation; or
        - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
        - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets.
  - 6.4 The Customer must advise seller immediately of any Event of Default or any action by third parties (including any of its creditors) affecting seller's security interest in the goods.
  - 6.5 The Customer agrees to do anything that seller reasonably requires to ensure that seller has a perfected security interest in all of the goods and a purchase money security interest in each part of the goods to the extent of the purchase price for that part.
  - 6.6 Seller may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any goods.
  - 6.7 Customer agrees to reimburse the seller for all costs and/or expenses incurred or payable by the seller in relation to registering, maintaining or releasing any financing statement or any other document, in respect of any security interest under the Terms.
  - 6.8 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Terms.
  - 6.9 The Customer acknowledges that:
    - (a) where seller has additional rights under Part 9 of the PPSA, those rights shall continue to apply;
    - (b) nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms, or the security under these Terms, and Customer waives the Customer's rights under sections 121, 125, 129 and 131 of the PPSA.
7. **Samples:** Marble, Porphyry and Granite are natural products and, as such, are not uniform or consistent. The parties understand and accept that the sample shall not be binding on us and shall have the sole purpose of providing a general overview of the goods.
8. **Payments:** Payments shall be made by the due date. At the expiry of the payment deadline we shall be authorized to charge buyer default interest, in accordance with Italian Legislative Decree No. 231/2002.
9. **Limitation of Liability**
  - 9.1 If the goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 ("CGA") does not apply. If the Customer on-sells the goods then it must be a term of the sale contract that the CGA does not apply if the goods are being acquired for business purposes.
  - 9.2 The Customer indemnifies seller against any liability or cost incurred by seller under the CGA as a result of any breach by the Customer of the obligations contained in the Contract.

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- 9.3 The following terms apply wherever the CGA does not apply, or where the following terms are not inconsistent with the CGA:
- (a) defective goods or goods which do not comply with the Contract shall at seller's discretion be repaired, replaced or repeated, or the price refunded;
  - (b) any right which the Customer may have to reject non-conforming or defective goods shall only be effective if the Customer notifies seller in writing within five days following delivery and seller is given the opportunity to inspect the goods;
  - (c) seller accepts no liability for any Claim by the Customer or any other person, including without limitation any Claim relating to or arising from:
    - (i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise;
    - (ii) any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by seller in writing, and the Customer agrees to indemnify seller against any such Claim. In any event, seller's liability under any Claim shall not exceed the price of the goods.
- 9.4 Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by the CGA, and these terms are to be modified to the extent necessary to give effect to that intention. The United Nations Convention on Contracts for the International Sale of goods does not apply.
- 9.5 To the extent permitted at law, all warranties whether implied or otherwise, not set out in these Terms are excluded and seller is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
- (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by seller's failure to complete or delay in completing the order to deliver the goods.
10. **Jurisdiction:** Any disputes arising from matters relating to this contract shall be referred to and settled finally and conclusively by the Court of Bolzano, (BZ) Italy.
11. **Confirmation:** By placing an order buyer expressly warrants and represents, in writing, that it fully and unconditionally accepted these Terms, which, along with each of the Customer's orders from time to time, constitute the contract between the parties.

The GENERAL TERMS AND CONDITIONS OF SUPPLY of company Nikolaus Bagnara Spa are visible at [www.bagnara.net](http://www.bagnara.net)