

TERMS AND CONDITIONS

These Terms and Conditions apply to any order placed by a Customer for any Goods and/or Services provided by the business on the top of the Quotation (the Contractor).

For the purposes of this Agreement:

"**Agreement**" shall mean these Terms and Conditions together with the Quotation and any Credit Application (if applicable);

"**Australian Consumer Law**" means the Australian Consumer Law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth) as amended from time to time;

"**Business Day**" means a day on which the banks are open for general banking business in South Australia except Saturday, Sunday and public or statutory holidays;

"**Contractor**" means the business on the top of the Quotation and any representatives acting on its behalf;

"**Credit Application**" means a Credit Application provided to the Customer by the Contractor (if applicable);

"**Customer**" means any individual and/or business entity named in the Quotation and/or the paperwork accompanying the Quotation acceptance or otherwise accepting the Quotation including these Terms and Conditions;

"**Goods**" means plumbing and/or gas related Goods and associated components as specifically described on the Contractor's Quotation, Invoice and other paperwork supplied to the Customer by the Contractor;

"**GST**" means Goods and Services Tax payable under the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

"**Intellectual Property**" means know-how, systems, manuals, trade secrets, copyright, trademarks, eligible layouts and patents.

"**Invoice**" means the invoice for payment provided by the Contractor to the Customer for the Works in whole or in part;

"**Services**" means the plumbing and/or gas related services and/or maintenance as described on the Contractor's Quotation, Invoice and other paperwork supplied to the Customer by the Contractor;

"**Site**" means the place where the Contractor is to provide the Goods and/or Services to the Customer as outlined in the Quotation;

"**Quotation**" means any quote for Goods and/or Services provided to the Customer by the Contractor from time to time; and

"**Works**" means any and all Goods and/or Services provided by the Contractor to the Customer.

1. QUOTATION

- 1.1. The Contractor shall specify in the Quotation the Goods and Services required to carry out the Customer's instructions and outline an estimate of the Contractor's charge for the performance of such Services and the cost of the Goods.
- 1.2. The Contractor need not supply or provide the Goods and/or Services until the Customer accepts the Quotation and this Agreement.
- 1.3. Quotation prices will remain current for fourteen (14) days from the date of the Quotation.
- 1.4. Unless otherwise stated, the price for the Goods and Services is GST exclusive.
- 1.5. Any exclusions, being costs that are to be borne by the Customer, are listed in the Quotation.

2. PRICE

The price payable by the Customer to the Contractor for the Goods and/or Services is the price specified in the Quotation, which can be varied in accordance with this Agreement.

3. ACCEPTANCE

- 3.1. The following shall be deemed acceptance by the Customer of the Quotation and the Agreement:
 - 3.1.1. the Customer returning the Quotation acceptance to the Contractor with the Customer's signature;
 - 3.1.2. a written acceptance, whether by post, email correspondence, fax or other means which state that the Customer accepts the Quotation; and
 - 3.1.3. payment of the deposit as specified in the Quotation to the Contractor;

- 3.1.4. the Customer instructing the Contractor to commence work at the Site.

4. DEPOSITS

- 4.1. The Contractor may, in its sole discretion, require a deposit to be paid before commencing the Works.
- 4.2. A minimum deposit, if required, will be specified in the Quotation and is payable by the Customer within two (2) Business Days of the Customer accepting the Quotation. This deposit is non-refundable unless otherwise specified in this Agreement.

5. PAYMENT

- 5.1. Payment for Goods and/or Services must be made in full by the Customer to the Contractor within seven (7) days from receipt of any Invoice.
- 5.2. The provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA) may apply, at the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services.
- 5.3. If the Customer fails to make any payment for the Goods and/or Services when payment falls due, then the Customer may, without prejudice to any other right or remedy of the Contractor:
 - 5.3.1. Be charged interest at a rate of 2% per month cumulative which is to be calculated on a day to day basis on any monies owed to the Contractor. The parties agree that such amounts are not a penalty but a true measure of the damages incurred by the Contractor. Payments received from the Customer will be credited first against any account keeping fees and interest, and all such fees shall be payable by the Customer on demand from the Contractor;
 - 5.3.2. Be charged an administrative fee of \$25.00 AUD for each time the Contractor has to follow up with the Customer for late payment; and
 - 5.3.3. Pay the Contractor for any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay the Contractor all sums outstanding as owed by the Customer to the Contractor including but not limited to debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

6. VARIATIONS

- 6.1. Any oral and/or written variations sought by the Customer relating to Works in progress and/or to be undertaken by the Contractor are subject to approval by the Contractor.
- 6.2. The Contractor will be entitled to vary any Quotation provided to the Customer if:
 - 6.2.1. the Customer requires a variation, orally or in writing, which is accepted by the Contractor; or
 - 6.2.2. the Customer provides incomplete or inaccurate information to the Contractor in order for it to complete the Works
in which case the Customer will be liable to pay all additional costs as a result of the variation or providing incomplete or inaccurate information.

7. CANCELLATION

- 7.1. The Contractor:
 - 7.1.1. May cancel its obligations to supply the Goods and/or Services under the Agreement by giving written notice to the Customer, at any time before the deposit is paid by the Customer under clause 4.1 and 4.2 or
 - 7.1.2. May, if the Customer has breached the Agreement and the Contractor has given the Customer written notice of the breach providing them seven (7) days to remedy the breach and the Customer has failed to remedy the breach within this timeframe, cancel its obligation to supply the Goods and/or Services remaining under the Agreement by giving written notice to the Customer; and
 - 7.1.3. May immediately cancel the Agreement if the Customer:
 - 7.1.3.1. is declared bankrupt; or
 - 7.1.3.2. has a receiver, agent or manager appointed for all or substantially all of the property of the Customer; or
 - 7.1.3.3. enters into an arrangement or composition with its creditors; or
 - 7.1.3.4. becomes insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth).

- 7.1.4. Shall not be liable for any loss or damage from the cancellation of the Agreement under this clause.
- 7.2. The Customer:
- 7.2.1. May cancel its obligations under the Agreement by giving written notice to the Contractor, at any time before the deposit is paid by the Customer under clauses 4.1 and 4.2; and
- 7.2.2. May immediately cancel the Agreement if the Contractor:
- 7.2.2.1. is declared bankrupt; or
- 7.2.2.2. has a receiver, agent or manager appointed for all or substantially all of the property of the Contractor; or
- 7.2.2.3. enters into an arrangement or composition with its creditors; or
- 7.2.2.4. becomes insolvent within the meaning of section 95A of the *Corporations Act 2001 (Cth)*.
- 7.3. If the Customer cancels the Agreement outside of clause 7.2 herein then the Customer must reimburse the Contractor for any costs, expenses or losses incurred by the Contractor as a result of the Customer's cancellation. The Customer must make payment for such cancellation costs incurred within seven (7) days from receipt of an invoice from the Contractor detailing such costs.
- 8. EXTENSION OF TIME**
- 8.1. The Contractor shall be entitled to an extension of time to complete the Works if the supply of Goods or the provision of the Services is delayed through no fault of the Contractor.
- 9. SITE ACCESS AND CONDITION**
- 9.1. The Customer will ensure that the Contractor has clear and uninterrupted access to the Site until any and all Works have been completed.
- 9.2. The Customer shall indemnify the Contractor for any additional costs if completion of the Work is delayed because of interrupted Site access.
- 10. BURIED OR UNSEEN SERVICES**
- 10.1. In the event that buried or unseen services are disturbed or damaged on Site whilst the Goods and/or Services are being supplied by the Contractor, the Contractor will not be liable for any repair work and any repair work required by the Customer will be undertaken by the Contractor and will constitute a Variation under clause 6 of this Agreement and will be paid to the Contractor by the Customer, at the Customer's expense.
- 10.2. The Customer agrees to supply the Contractor with scaled plans of underground pipes and cables on Site at least two (2) Business Days before the Contractor's proposed Works are to commence and to mark out precisely the location where the Goods and/or Services are to take place and the Customer shall be responsible or liable for any loss, damage or costs of alterations or repositioning of the location of the Goods and/or Services in the event that the Contractor incurs losses in that regard if the Customer's instructions are incorrect or not provided and the Services are provided in a position that does not comply with all relevant legislation, regulations, standards or guidelines. The Contractor is not required to follow up the Customer for these plans, it is an obligation of the Customer to undertake the matters outlined in this clause.
- 10.3. If the Customer fails to provide the Contractor with the appropriate plans for the Site the Customer will indemnify the Contractor from any and all claims for costs, expenses and/or losses it has against the Contractor and that any third party may have against the Contractor resulting from the Customer's failure under this clause.
- 11. OWNERSHIP AND RISK**
- 11.1. The Contractor remains the owner of the Goods until payment has been made in full to the Contractor.
- 11.2. The Customer must not sell or otherwise deal with the Goods until payment has been made in full to the Contractor.
- 11.3. Upon delivery of the Goods by the Contractor to the Site, the Customer bears any and all responsibility and liability in ensuring the Goods are secured and insured against loss and/or damage
- 11.4. Notwithstanding clauses 11.1, 11.2, and 11.3 risk of loss of, or damage to, the Goods passes to the Customer upon delivery.
- 11.5. The Customer is liable to reimburse the Contractor for any theft of Goods at the Site during the completion of Works through the Customer's insurance scheme or otherwise, as if the Works have already been completed (or part thereof) before the theft for the costs of resupplying the Goods and/or Services to repair any loss and damage resulting from the theft.
- 12. GOODS AND SERVICE GUARANTEE, REPAIRS AND WARRANTY:**
- 12.1. Any guarantees under the Australian Consumer Law which cannot be excluded by that statute or by any other law are not intended to be excluded by the Agreement.
- 12.2. The Customer agrees that the Contractor's liability to the Customer for any breach of any implied terms may, subject to the Australian Consumer Law be limited to the replacement, or repair or payment of the cost of replacement or repair of the relevant Goods and/or Services.
- 12.3. The Customer acknowledges that (at the Contractor's option):
- 12.3.1. the Goods repaired may be replaced by refurbished goods of the same type rather than being repaired;
- 12.3.2. refurbished parts may be used to repair goods.
- 12.4. All Goods and/or Services supplied by the Contractor shall have the benefit of any warranty given by the goods respective manufacturer.
- 12.5. Subject to the Customer's rights in relation to Goods and Services, under the Australian Consumer Law and to the fullest extent permitted by law, the Customer agrees that the Contractor will not be liable to the Customer for:
- 12.5.1. loss of profit or other economic loss;
- 12.5.2. direct or indirect or consequential, special, general or other damages; or
- 12.5.3. other expenses or costs arising out of a breach of contract or any common law duty (including negligence) by the Contractor, its agents or employees.
- Arising from but not limited to those caused by:
- 12.5.4. external causes including natural disaster, fire, water, lightning, power surge or spike, accident, neglect, misuse, vandalism;
- 12.5.5. the use of the Goods and/or Services for other than their intended purpose;
- 12.5.6. the use with or connection of the Goods and/or Services to item/s not approved by the Contractor;
- 12.5.7. the performance of maintenance or attempted repair by person/s other than the Contractor or as authorised by the Contractor;
- 12.5.8. any configuration or reconfiguration by the Customer.
- 12.6. No liability is assumed for any consequential damages caused from the use of Goods and/or Services by the Customer.
- 12.7. The Customer is responsible for any return freight charges for Goods that are returned under warranty.
- 13. CONTRACTOR LIABILITY:**
- 13.1. The Contractor shall not be liable for any damage to the Goods and/or Services caused by the Customer or third parties and shall not be required to indemnify any party for any damage caused by others.
- 13.2. Subject to the Australian Consumer Law, the Contractor will not accept the return of, or give credit for, any Goods and/or Services supplied in accordance with this Agreement.
- 13.3. The Contractor will not be liable for any delays caused by any person other than the Contractor or any of its representatives.
- 13.4. Subject to the Australian Consumer Law, the Contractor will not be liable for any consequential or indirect losses.
- 14. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA):**
- 14.1. Until the Contractor receives payment for all monies owed to it, the Customer acknowledges that the Contractor has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to the Contractor.
- 14.2. The Customer acknowledges that the Agreement constitutes a Security Agreement for the purpose of the PPSA.
- 14.3. On default of payment the Customer irrevocably permits the Contractor, or any person authorised in writing by the Contractor, upon reasonable notice to enter the Customer's premises or any premises where the Goods are reasonably believed by the Contractor to be held on the Customer's behalf. The Customer also agrees to indemnify the Contractor for all costs and expenses of recovery of the Goods and losses, if any, on their resale and any damage to property incurred as a result of any such removal.
- 14.4. The Customer undertakes to do anything (such as obtaining consents, producing documents or getting documents completed or signed) which the Contractor considers reasonably necessary for the purposes of ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective.
- 14.5. To the extent permitted by law, the Customer waives its rights to:
- 14.5.1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d) and 135 of the PPSA;
- 14.5.2. redeem the Goods under section 142 of the PPSA;
- 14.5.3. reinstate the Security Agreement under section 143 of the PPSA;
- 14.5.4. receive a Verification Statement.
- 14.6. Nothing in this clause prevents the Contractor from taking collection or legal action to recover any monies owed to it from time to time.
- 15. INSTRUCTIONS AND COMMUNICATIONS**
- 15.1. The Contractor shall only receive instructions from the Customer signing this Agreement. If the Customer authorises any other employee or agent to

- give the Contractor instructions in lieu of or in addition to the person signing this Agreement then the Customer must inform the Contractor of that persons details.
- 15.2. The Contractor shall not be liable in any way for any losses incurred by the Customer in accepting instructions from the persons contemplated by this clause. The Contractor may elect to communicate by electronic mail or such other form as is convenient, and does not warrant that any such communication will be free from defect, virus or shall otherwise be secure. The Customer hereby acknowledges and agrees to accept such communications and releases the Contractor from all liability in respect of any losses that may be incurred by the Customer from such communications.
- 16. DEFECTS**
- 16.1. The Customer must inspect all Goods provided on delivery to Site or at completion of the Works, and within fourteen (14) days of delivery to Site or completion of the Works notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or the Quotation. The Customer must provide the Contractor with a reasonable opportunity to modify any defect or damage.
- 17. RETURN OR EXCHANGE OF GOODS**
- 17.1. Except as required by law, the Contractor is under no obligation to accept Goods which the Customer wishes to return or exchange. The Contractor can request any details it considers necessary from the Customer as part of its decision under this clause. The Customer agrees to comply with all such reasonable requests for documentation and information from the Contractor. Any Goods returned or exchanged are at the discretion of the Contractor (other than as is required at law) and at the Customers entire risk as to loss or damage.
- 17.2. The Customer agrees that the Contractor has discretion to accept any returned Goods, provided that such Goods shall only be accepted for return with prior approval of the Contractor. Goods that are returned to the Contractor will be subject to a 10% handling fee of the invoiced value of the returned Goods, which handling fee is payable by the Customer to the Contractor. Return freight and other expenses must be paid for by the Customer.
- 18. LIMITATION OF LIABILITY**
- 18.1. The Agreement does not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which cannot be excluded, restricted or modified.
- 18.2. To the extent permitted by law, all terms, conditions, warranties and representations, expressed or implied, by statute or otherwise, are hereby expressly excluded.
- 18.3. To the extent permitted by law, the Contractor shall not be liable to the Customer for any injury, harm, loss, damage, costs, expense or other claim including economic loss or loss of profits however arising from the supply of the Goods and/or Services or arising from any breach, default or negligence of the Contractor in connection with the supply of the Goods and/or Services.
- 18.4. If the Customer is entitled to benefit of any implied terms which cannot be excluded, the Contractors liability shall be limited, at its options, in the case of supply of Goods to:
- 18.4.1. the replacement of the Goods or the supply of an equivalent or similar Goods;
- 18.4.2. the payment of the costs of replacing the Goods or acquiring relevant Goods;
- 18.4.3. the payment of the costs of having the Goods repaired;
- 18.4.4. the repair of the Goods.
- 19. FORCE MAJEURE**
- 19.1. The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to supply the Goods and/or complete the Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, vandalism, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal Contractors to supply the necessary material or any other matter beyond the Contractor's control.
- 20. CONFIDENTIALITY**
- 20.1. The parties shall, except for legal and other advisors, keep strictly confidential between them all information shared under the Agreement.
- 21. SUPPLY AUTHORITY, LEGISLATIVE AND STATUTORY CHARGES**
- 21.1. The Contractor shall be entitled to be reimbursed all the costs and charges levied by any statutory or other authority with respect to the Works.
- 22. DISPUTE RESOLUTION**
- 22.1. Any disputes between parties arising from the performance of provisions of the Agreement and/or the Quotation must be attempted to be settled between the parties by an authorized representative with authority from each party meeting within fourteen (14) days of notification of a dispute in writing from one party to the other party. Such a meeting is to take place within the state of South Australia at a place nominated by the Contractor.
- 22.2. If the meeting referred to at clause 22.1 above does not result in settlement of the dispute between the Contractor and the Customer, the dispute may then be referred to mediation, if agreed by both parties. The Mediator is to be appointed by agreement between the parties and in the event that the parties agree to mediate but cannot agree to the mediator to be appointed then the mediator is to be appointed by the then current President of the Law Society of South Australia. The costs of any mediation are to be borne equally between the Contractor and the Customer.
- 22.3. If the dispute cannot be settled through mediation, or the parties do not both consent to a mediation, then either party is at liberty to commence legal proceedings.
- 22.4. During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of the Agreement which are not under dispute.
- 23. ASSIGNMENT**
- 23.1. The Contractor can assign their interest in the Agreement to any third party whatsoever without consent of the Customer and agrees to advise the Customer as soon as is practicable after any such assignment is made.
- 23.2. This Agreement shall not be assigned by the Customer without prior written consent of the Contractor with such consent not to be unreasonably withheld.
- 23.3. Any consent that may be given by the Contractor may be granted or withheld in the Contractor's absolute discretion and shall not at any time constitute a waiver of the Contractor's rights and interests under this Agreement.
- 24. GUARANTEE**
- 24.1. The person signing this Agreement on behalf of the Customer hereby guarantees the payment of all monies that become due and payable under this Agreement. This Guarantee will continue following the termination of this Agreement until all monies owing to the Contractor are paid in full.
- 25. GST AND OTHER TAXES**
- 25.1. The Customer must pay to the Contractor Goods and Services Tax on the Goods and/or Services as is required by the Australian Taxation Office as well as any other taxes, duties, fees and levies for the Goods and/or Services supplied that may be applicable. The amount the Customer owes the Contractor will be stated in the Invoice to the Customer.
- 26. GENERAL MATTERS**
- 26.1. This Agreement contains the entire agreement between the Contractor and the Customer. The parties agree that any negotiations that led to this Agreement have been accurately incorporated in this Agreement.
- 26.2. In entering into this Agreement the parties hereby acknowledge that they have not made any warranties or representations to each other except as incorporated in this Agreement.
- 26.3. This Agreement is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia.
- 26.4. The Customer acknowledges that any and all Intellectual Property relation to the Goods and/or Services remains the sole and exclusive property of the Contractor.
- 26.5. The Customer undertakes to obtain and provide the necessary local government authority approvals for the provision of the Services, if necessary.
- 26.6. Any and all statutory and local government consents (including but not limited to planning or building approvals) relevant to the Services must be obtained by the Customer at its sole cost.
- 26.7. If any part of this Agreement is found to be void, voidable or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has under this Agreement.