

Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

In this agreement unless the context indicates otherwise, the following words have the following meanings.

Agreement means agreement includes these terms and conditions; the quotation signed by the customer; and any other variation.

'Business Day' means a day that is not a Saturday, Sunday or public holiday in Melbourne;

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Customer means the Customer of the Services to be supplied in accordance with the quotation and includes any agent.

Commencement Date means the date on which Plumbing Australia (VIC) Pty Ltd is to attend the Customers premises to start performing the Services.

Completion Date means the date on which Plumbing Australia (VIC) Pty Ltd is to complete performing the Services, or such other date as the Parties may agree but the Customer agrees that this date is an estimated date only.

Facilities means working space, parking space, access to the Customer's premises, access to the plumbing system at the Customers premises and similar. It includes access to such resources at the Customers premises but also use of them to the extent required by Plumbing Australia (VIC) Pty Ltd in order to perform the Services.

Fee/s means the amounts or hourly rate as set out in Plumbing Australia (VIC) Pty Ltd quotation, and any additional amounts for variations.

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Location means the Customer's site where the Services are required to be performed.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Parties means Plumbing Australia (VIC) Pty Ltd and the Customer, and **Party** means either one of them.

PPSA means the Personal Property Securities Act 2009 (Cth).

Services means the goods and services to be provided by Plumbing Australia (VIC) Pty Ltd under this agreement.

Specification means the details of the Services as set out in the quotation

Plumbing Australia (VIC) Pty Ltd means **Plumbing Australia (VIC) Pty Ltd** ACN 630 796 459.

Plumbing Australia (VIC) Pty Ltd Personnel means any person or persons that Plumbing Australia (VIC) Pty Ltd designates to perform the Services on Plumbing Australia (VIC) Pty Ltd behalf.

Termination Date means the earlier of:

(a) the date of termination of this agreement by law or by agreement between the parties;

or (b) the date of discharge by performance.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this agreement;
- (e) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of this agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (i) the word "including" (and related forms including "includes") means "including without limitation".

2 Services

- (a) Plumbing Australia (VIC) Pty Ltd will provide the Services to the Customer in consideration for the Customer paying the Fees to Plumbing Australia (VIC) Pty Ltd, subject to the provisions of this agreement.
- (b) Plumbing Australia (VIC) Pty Ltd and the Customer will agree the time for the performance of the Services subject to the availability of Plumbing Australia (VIC) Pty Ltd staff and agents.
- (c) Plumbing Australia (VIC) Pty Ltd will use reasonable endeavours to complete the Services by the Completion Date and the Customer agrees that Plumbing Australia (VIC) Pty Ltd will not be liable for any Claim, Losses or damage (including consequential damage) arising out of the lateness of completion or non-completion of the Services.
- (d) Plumbing Australia (VIC) Pty Ltd may determine which employees or agents of Plumbing Australia (VIC) Pty Ltd will carry out the Services.

3 Location

Plumbing Australia (VIC) Pty Ltd will provide the Services at the Customer's site where the Services are required to be performed.

4 Fees

4.1 Formation of agreement

- (a) An agreement will be entered into between the Customer and Plumbing Australia (VIC) Pty Ltd on the date that the Customer accepts Plumbing Australia (VIC) Pty Ltd quotation in writing and such acceptance is communicated to Plumbing Australia (VIC) Pty Ltd.

- (b) Any quotation from Plumbing Australia (VIC) Pty Ltd is deemed to be automatically revoked within 30 days after it is issued, if it has not been accepted within that period by the Customer.
- (c) Plumbing Australia (VIC) Pty Ltd reserves the right at any time before delivery of the Services, by giving prior written notice to the Customer, to increase the Fees to reflect any increase in the cost to Plumbing Australia (VIC) Pty Ltd due to any factor beyond its control (including without limitation changes in taxation laws, significant increase in cost of labour, materials, or other cost of manufacture), any change in delivery dates, quantities or Specification on reasonable commercial grounds. If the Customer does not accept the change in the Fee the Customer may terminate this agreement by written notice to Plumbing Australia (VIC) Pty Ltd no less than 48 hours prior to the Commencement Date and failing such notice is deemed to have accepted such change. If the Customer does not accept the change in the Fee and terminates this agreement no less than 48 hours prior to the Commencement Date, Plumbing Australia (VIC) Pty Ltd will reimburse to the client any pre-payment of the Fee in full.
- (d) Notwithstanding anything to the contrary contained in this agreement, even if a quotation has been accepted by the Customer, Plumbing Australia (VIC) Pty Ltd may cancel this agreement or cancel or postpone delivery of the Services at any time giving at least 24 hours written advice to the Customer. Upon cancellation of the agreement by Plumbing Australia (VIC) Pty Ltd in accordance with this clause, Plumbing Australia (VIC) Pty Ltd will reimburse to the client any pre-payment of the Fee received from the Customer. Otherwise, then such reimbursement the Customer agrees it will have no Claim against Plumbing Australia (VIC) Pty Ltd arising from such cancellation or postponement.
- (e) When more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Fees.

4.2 Payment of Fees

- (a) Plumbing Australia (VIC) Pty Ltd provides emergency plumbing services (including weekends) and often has to provide the Services urgently and/or on short notice. In the circumstances the Customer agrees that Payment of all Fees will be made by the Customer to Plumbing Australia (VIC) Pty Ltd in cleared funds upon acceptance of the quotation and prior to the Commencement Date.
- (b) **Once a quotation is accepted by a Customer Plumbing Australia (VIC) Pty Ltd has to arrange for employees and/or agents to provide the Services and it has to incur expenses to purchase goods and/or in preparation for delivery of the Services. In the circumstances, if the Customer after accepting a quotation and payment of the Fees, decides to cancel the Services, the parties agree to the following terms with respect to reimbursement of fees:**
 - (i) **If cancellation occurs no less than 48 hours prior to the Commencement Date, Plumbing Australia (VIC) Pty Ltd will reimburse 85% of the Fee to the Customer.**
 - (ii) **If cancellation occurs no less than 24 hours prior to the Commencement Date Plumbing Australia (VIC) Pty Ltd will reimburse 70% of the Fee to the Customer.**
- (c) In the event that the Customer requests a variation to the Services or any detail set out in the quotation, Plumbing Australia (VIC) Pty Ltd will provide the Customer with a written variation quote detailing the amended Services and the amended price and the likely delay, (if any) in providing the Services. The Customer must provide its written acceptance of the variation before Plumbing Australia (VIC) Pty Ltd will provide the amended Services.
- (d) Any additional amounts due by the Customer under this agreement, including but not limited to a Fee for variations, will be paid in cleared funds prior to delivery of the variation Services.
- (e) All payments from the Customer must be made without deduction or set off by cash, bank cheque, direct credit or credit card.
- (f) If the Customer makes payment by credit card, the Customer authorises Plumbing Australia (VIC) Pty Ltd to debit the Fees from the Customer's credit card. This includes payment by credit card over the telephone.
- (g) When making a payment, the Customer must quote relevant reference numbers and the invoice number.

- (h) The Customer agrees that all invoices shall be provided in a fixed price format inclusive of GST.
- (i) If the Customer fails to pay the Fees in accordance with the terms of this agreement Plumbing Australia (VIC) Pty Ltd is not obliged to perform the Services.
- (j) If for any reason payment of the Fees are not made prior to the Commencement Date, Plumbing Australia (VIC) Pty Ltd is entitled to charge interest on any amount owing at the rate of 8% per year above the base lending rate of Westpac Bank, accruing daily, and claim all legal costs on a full indemnity basis relating to the recovery of the debt.

4.3 Risk

- (a) All risk for any goods forming part of the Services passes to the Customer on delivery.

5 Customer's obligations

- (a) During the preparation of any quotation and performance of the Services the Customer will:
 - (i) co-operate with Plumbing Australia (VIC) Pty Ltd as Plumbing Australia (VIC) Pty Ltd reasonably requires.
 - (ii) provide the information and documentation that Plumbing Australia (VIC) Pty Ltd reasonably requires.
 - (iii) make available to Plumbing Australia (VIC) Pty Ltd such Facilities as Plumbing Australia (VIC) Pty Ltd reasonably requires.
 - (iv) ensure that the Customer's agents cooperate with and assist Plumbing Australia (VIC) Pty Ltd.
 - (v) ensure that the Plumbing Australia (VIC) Pty Ltd has uninterrupted access to the site at which the Services will be performed for the duration of the Services.
 - (vi) ensure that any building or construction site on which the Services are performed will comply with all applicable occupational health and safety laws relating to building and construction sites and any other relevant safety standards or legislation.
 - (vii) will be responsible for the removal of rubbish from or clean-up of the site at which the Services are performed.
 - (viii) if the Customer is supplying goods or other services for which the Services are required, then the Customer must have the site ready and goods available before the time at which Plumbing Australia (VIC) Pty Ltd is required to perform the Services.
- (b) The Customer will not charge for Plumbing Australia (VIC) Pty Ltd use of the Facilities made available by the Customer.
- (c) If the Customer does not provide the Facilities that Plumbing Australia (VIC) Pty Ltd reasonably requires to perform the Services, then any additional costs and expenses which are reasonably incurred by Plumbing Australia (VIC) Pty Ltd will be paid by the Customer.

6 No partnership or employment relationship

- (a) Nothing in this agreement constitutes the relationship of employer and employee between the Customer and Plumbing Australia (VIC) Pty Ltd or between the Customer and Plumbing Australia (VIC) Pty Ltd Personnel.
- (b) It is the express intention of the Parties that any such relationships are denied.

7 Use of subcontractors

- (a) Plumbing Australia (VIC) Pty Ltd is permitted to use other persons to provide some or all of the Services.
- (b) Plumbing Australia (VIC) Pty Ltd is responsible for the work of any of Plumbing Australia (VIC) Pty Ltd subcontractors.
- (c) Any work undertaken by any of Plumbing Australia (VIC) Pty Ltd subcontractors will be undertaken to the same standard as stated in this agreement and the Specifications.

8 Disclosure and ownership of intellectual property

- (a) All plans, drawings and designs produced by Plumbing Australia (VIC) Pty Ltd in relation to the Services remain the property of Plumbing Australia (VIC) Pty Ltd and must be returned and must be returned to Plumbing Australia (VIC) Pty Ltd immediately upon demand.
- (b) Any plans, drawings, Specifications and quotes given by Plumbing Australia (VIC) Pty Ltd must not be disclosed to any third party without the written consent of Plumbing Australia (VIC) Pty Ltd or used by the Customer other than for the purposes of this agreement. Copyright in these documents remain the property of Plumbing Australia (VIC) Pty Ltd.

9 Warranties, liability and indemnities

9.1 Warranties

Plumbing Australia (VIC) Pty Ltd does not exclude or limit the application of any provision of any statute (including the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law) where to do so would contravene that statute or cause any part of this agreement to be void.

9.2 Plumbing Australia (VIC) Pty Ltd warrants that any goods forming part of the Services will be:

- (a) Of merchantable quality using proper materials; and
- (b) Reasonably fit for their purpose as designed.

9.3 Plumbing Australia (VIC) Pty Ltd excludes from the agreement all conditions, warranties and terms implied by statute or general law or custom except where any implied condition of warranty the exclusion of which would contravene any statute or cause this agreement to be void ("**Non-Excludable Condition**").

9.4 To the maximum extent permitted by law, the sole liability of the Plumbing Australia (VIC) Pty Ltd to the Customer in respect of any defective goods or Services (at the election of the Plumbing Australia (VIC) Pty Ltd) is limited to:

- (a) The replacement of the defective goods or the re-supply of the Services to the Customer; or
- (b) payment of the cost of replacing the goods or of acquiring equivalent goods or payment of the cost of having the services supplied again; and
- (c) Plumbing Australia (VIC) Pty Ltd will not be liable to the Customer for any other loss or damage, including, economic loss or consequential damages.

9.5 Plumbing Australia (VIC) Pty Ltd provides no warranty that any result or objective can or will be achieved or attained at all or by the Completion Date or any other date, whether stated in this agreement, the quotation or elsewhere.

9.6 To the maximum extent permitted by law, the Customer will indemnify and will continue to indemnify Plumbing Australia (VIC) Pty Ltd, its officers, employees and contractors ("Plumbing Australia (VIC) Pty Ltd Indemnified

Parties”) against any Claims, liability, Losses, damage, action, demand, costs, or expenses incurred or suffered by the Plumbing Australia (VIC) Pty Ltd Indemnified Parties that is the result of Plumbing Australia (VIC) Pty Ltd

entering the Location to perform the Services except to the extent that the claim results from the wilful or negligent conduct of the Plumbing Australia (VIC) Pty Ltd Indemnified Parties.

9.7 The limitations and indemnities contained above continue after the Termination Date.

Defects

9.8 The Customer hereby indemnifies and holds Plumbing Australia (VIC) Pty Ltd indemnified against all Claims and Losses arising from varied or unseen services been disturbed or damaged during the performance of the Services except to the extent that the claim results from the wilful or negligent conduct of the Plumbing Australia (VIC) Pty Ltd.

9.9 Unless specifically included in the written quote, rock excavation, dewatering or support of work such as pier and beams for filled or made-up ground will be charged out as a variation to the original Fees.

9.10 Quotations are based on excavation of clean soils only unless otherwise specifically stated in writing.

9.11 Existing soils shall be returned to excavated areas where possible and grounds shall be left filled.

9.12 Where drain inspection or plumbing equipment becomes jammed as a result of damaged drains or blockages Plumbing Australia (VIC) Pty Ltd will be entitled to take reasonable action to retrieve such items and will not be liable for any damage to the Customer as a result of taking such reasonable action.

9.13 Landscaping and concrete works are not included in the quotation unless specified in writing.

9.14 All concrete, paving and landscape works including shrub/plant and lawn replacement will be treated as a variation and will be charged to the Customer.

9.15 The Customer acknowledges that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Additionally, the Customer acknowledges that blocked drains, sewer pipes and stormwater lines cannot be permanently fixed by simply removing plant/tree root growth or cleaning the drain. Therefore, no warranty is provided in relation to future blockages regardless of time frame reoccurring whether in the same location or other drainage/sewer lines within the same property.

9.16 The Customer further acknowledges that Close Circuit Television (CCTV) is a specialised piece of equipment that may or may not be used at Plumbing Australia (VIC) Pty Ltd sole discretion in an attempt to identify the source of the blocked drain. Should CCTV equipment be required this will constitute a variation.

10 PPSA

10.1 Where Plumbing Australia (VIC) Pty Ltd has supplied goods as part of the Services to the Customer but where title in those goods has not yet passed to the Customer and the goods have not yet become affixed to land, the Customer acknowledges and agrees that:

- (a) the goods constitute Personal Property for the purposes of the PPSA;
- (b) this agreement constitutes a Security Agreement for the purposes of the PPSA;
- (c) the Customer will grant Plumbing Australia (VIC) Pty Ltd a purchase money security interest (“PMSI”) under the PPSA in the goods and their proceeds to secure all amounts owed to Plumbing Australia (VIC) Pty Ltd by the Customer;
- (d) Plumbing Australia (VIC) Pty Ltd may register the PMSI on the Personal Property Securities Register (“PPSR”);

- (e) it will undertake to do all things necessary and provide Plumbing Australia (VIC) Pty Ltd on request all information Plumbing Australia (VIC) Pty Ltd requires to register a financing statement or financing change statement on the PPSR;
- (f) it undertakes not to change its name in any form or other details on the PPSR without first notifying Plumbing Australia (VIC) Pty Ltd; and
- (g) it will, if required by Plumbing Australia (VIC) Pty Ltd, pay to Plumbing Australia (VIC) Pty Ltd the cost of registering and maintaining registration of the Customer's PMSI on the PPSR, within 14 days of the request.
- (h) Plumbing Australia (VIC) Pty Ltd need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
- (i) No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties are required to do so due to the operation of section 275(7) or are otherwise required to do so by law) and the Customer must not authorise the disclosure of such information.
- (j) The Customer appoints Plumbing Australia (VIC) Pty Ltd as its attorney to sign in the Customer's name all documents which Plumbing Australia (VIC) Pty Ltd considers necessary to enforce and to protect its rights under clause 11 of this agreement.
- (k) The Customer agrees that, to the maximum extent permitted by law, it waives any rights it may have pursuant to, and the parties contract out of, sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143 of the PPSA.
- (l) The Customer acknowledges that unless otherwise defined in this agreement, the terms and expressions used in clause 11 of this agreement have the meanings given to them, or by virtue of, the PPSA.

11 General

11.1 Force majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that Party.
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 2 months, either Party may terminate this agreement by written notice to the other Party.

11.2 Entire agreement

- (a) This agreement contains the whole agreement between the Parties in respect of the subject matter of the agreement.
- (b) The Parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement.

11.3 Waiver

- (a) No failure or delay by both parties in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

11.4 Further assurance

Each Party to this agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this agreement or to make it easier to enforce.

11.5 Severance

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.

11.6 Law and jurisdiction

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.