

# Terms & Conditions of Trade

1. Any and all works carried out by Your Choice Plumbers either quoted or otherwise shall be subject to these Terms and Conditions in full. It is the sole responsibility of the client to read the Terms and the Conditions carefully and pursue legal advice if required prior to engaging Your Choice Plumbers.

## Definitions

2. "Plumber" means Safe Seal Plumbing Pty Ltd trading as Your Choice Plumbers, or any agents, contractors or employees hereof,
3. "Client" shall mean the client, any person acting on behalf of & with the authority of the client, or any person purchasing products & services from Your Choice Plumbers. Where the Client is a corporation or Partnership, its directors or partners agree to be bound by this contract jointly and severally.
4. "Contracted Price" shall mean the quoted price and any variation or in the absence of a quote the time and material rates as specified on the invoice.

## Quotations and Orders

5. Unless previously withdrawn, a quotation issued by the Plumber is open for acceptance for 30 days. The Plumber reserves the right to refuse any Order placed by Client within 7 days of the Order being placed.
6. Any quotation is based on the Plumber's professional estimation of where existing drainage, pipes, water or gas lines and electrical cables have been laid. If this is not the case or if they are inaccessible or unusable in their present state, the Plumber reserves the right to vary the quotation.
7. The Plumber reserves the right to vary a quotation once the supply of goods or services has commenced. The Client will be notified at their earliest convenience and approval sought to carry out the additional works.
8. Once an Order has been accepted by the Plumber, the Client cannot cancel it without the express consent of Plumber. Where the Plumber has already ordered goods from a third party, cancellation will only be possible if the Plumber can return the goods to the third party at no loss to Plumber.
9. The Plumber may, at any time after acceptance of an Order, cancel the supply of Goods or Service and the Plumber will not be liable for any loss or damage suffered by Client as the result of such cancellation.

## Contract Price and Payment

10. The Client shall pay the Plumber the Contract Price and any variation in accordance with these terms and conditions.
11. The Price is payable in full without any deduction at the completion of the works unless otherwise agreed in writing with the Plumber.

12. A credit card transaction fee applies to American Express credit card payments.
13. If the supply of goods and service is by credit, the Client must have submitted a credit application which is approved in writing by the Plumber. In that case, payment must be in accordance with the terms of the credit application.
14. If the Client fails to make any payment, the Plumber may charge interest on the outstanding amount/s at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) from the due date of payment until the date of full payment.
15. The Client is liable for all reasonable costs and expenses incurred by the Plumber or by any third party engaged by the Plumber incidental to and arising out of late payments of amounts due under this contract.
16. The Client agrees:
  - a. that, pursuant to the Personal Property Securities Act 2009 ("PPSA"), this agreement creates a security interest in all Goods (and proceeds of Goods) in favour of the Plumber to secure the purchase price for the Goods;
  - b. that the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142, 143 and, to extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Plumber elects in writing to retain Part 4.3 (which the Plumber may elect to do either in whole or in part);
  - c. to waive its right to receive notice of a verification statement in relation to registration of a security interest; and
  - d. the Plumber may recover from the Client the cost of doing anything under this clause 16, including registration fees.

## Site Issues

17. Unless otherwise agreed the supply of service does not include the excavation, relocation, removal or repair of soil, rock or other surfaces that may be encountered in the supply of goods and services.
18. No provision for the costs associated with the identification or removal and cartage of Asbestos Containing Material (ACM) that may be encountered during completion of Works. Costs associated with the identification and removal of ACM shall constitute a variation and such variation shall permit and additional charge for such work.
19. The Client acknowledges that pipes affected by root growth and or blockages are generally damaged as a result of such interference. The removal of root growth and/or blockages alone carries no warranty that similar problems will not recur unless permanent repairs are made to the affected pipework.
20. Where drain inspection or plumbing equipment becomes jammed as a result of damaged drains or blockages, the Plumber will be entitled to take reasonable action to retrieve such items. The Client agrees to pay the costs of the removal of the equipment including any excavation and restoration work.
21. The Plumber will take care when supplying the Goods or Services to minimise any disturbance or damage to surrounding areas including walls, ceilings, floors, garden beds and paint. Any repair or restoration required after the supply of the Goods or Services is not

included in Plumber's quotation, unless otherwise stated and must be carried out at Clients cost.

22. Pricing on Works are based upon the assumption that all existing installations comply with law, regulations and relevant Australian Standards. Any work required to bring existing installations into compliance with law, regulation and relevant Australian Standards shall constitute a variation.

23. Pricing on Works are based upon the assumption that the Plumber will have access to the site during normal working hours. If the Plumber's access to the site is impeded in any way, this shall constitute a variation.

## Goods and Services Tax

24. All Goods and Services are subject to Goods and Services Tax (GST).

## Plumber's Obligations

25. The Plumber will use it best efforts to supply Goods and Services in accordance with the quotation but will not be liable to the Client for any delays, no matter what the reason including negligence of the Plumber.

26. The Plumber shall perform work in a professional manner as per Australian Standards.

27. The Plumber shall perform work in accordance with OH&S requirements.

28. The Plumber shall handle any fixtures, fittings, materials and/or equipment provided by the Client with reasonable care.

29. The Plumber shall not be liable for any damage caused by defects in, or the unsuitability of client-supplied fixtures, fittings, materials and/or equipment for the purposes for which they were intended by the Client.

30. The Plumber shall not be liable for any loss or damage resulting from any act of God, fire, natural disaster, Act of Parliament, Government order, strike, war, delay in delivery of manufacturing materials or from any other circumstances beyond the Plumber's control.

31. Plumber may sub contract all or any of its obligations or rights without Client's consent.

## Client's Obligations

32. The Client agrees to the Plumber using their personal Information for purposes stated in the Your Choice Plumbers Privacy Policy.

33. The Client agrees that the site the Plumber is working on will comply with any occupational health and safety laws relating to building / construction sites.

34. The Client shall provide scaffolding and access equipment for the Works unless otherwise specified in the contract.

## Supply of Materials

35. Where any fixtures, fittings, materials and/or equipment are supplied by the Client, they will be stored, handled and installed at the risk of the Client. The Plumber is not liable for any failure of materials supplied by the Client.

36. Notwithstanding delivery of the Goods to the Client, title in the Goods shall remain with the Plumber until full payment is made by the Client to the Plumber. The Plumber reserves the right to reclaim the Goods from Clients possession, custody or control even if they have been delivered to Client or moved from the delivery address. Plumber reserves the right to keep or sell the Goods.

37. All materials removed from the Client's site/premises shall be deemed to be the property of the Plumber unless the Plumber is otherwise notified by the Client.

## Insurance

38. Plumber will take out and maintain all insurance it considers appropriate in respect of the supply of Goods and Services and all other insurances required by law.

## Termination of Contract

39. Either party may terminate this agreement immediately by notice to the other party:

- (a) if the other party breaches a material term of this agreement capable of being remedied and fails to remedy the breach within 10 business days after being given notice of breach;
- (b) if that other party breaches a material term of this agreement which is not capable of remedy; or
- (c) the other party is unable to pay its debts as they fall due; makes or commences negotiations with a view to making a general rescheduling of its indebtedness, scheme of arrangement or composition with its creditors; or takes any corporate steps for its winding up or the appointment of a receiver, administrator or official manager over any of its revenue and assets.

40. If Client terminates this agreement for any reason whatsoever Client must immediately pay Plumber for all Goods or Services already ordered from or supplied by Plumber.

## Dispute Resolution

41. If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying & providing details of the dispute. Within seven (7) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute.

42. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may be further notice in writing delivered or sent by certified mail to the other party refer such dispute to arbitration.

43. Each party shall bear its own costs of presenting its position to the arbitrator(s) unless the arbitrator(s) make another determination in respect of the costs.

## Warranty and Limitation of Liability

44. In relation to any Goods which are the subject of a manufacturer's warranty, Client agrees to comply with the terms of the manufacturer's warranty in the event there is a defect in the Goods.

45. To the extent permitted by law, all terms, guarantees, warranties, representations or conditions which are not expressly stated in this agreement are excluded. If the Plumber is liable for a breach of an imposed term, guarantee, warranty, representation or condition or warranty, the Plumber's liability is, at Plumber's option, limited to:

- a. the replacement of the Goods or the supply of equivalent goods or the supply of the Services again;
- b. the repair of the Goods;
- c. the payment of the cost of replacing the Goods or acquiring equivalent goods; or
- d. the payment of the cost of having the Goods repaired or resupplying the Services.

46. To the extent permitted by law the Plumber will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity and loss of data arising out of or in connection with the Goods or Services, including as a result of the late or non supply of Goods, whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

## Intellectual Property

47. Where the Plumber has designed or drawn Goods for the Client, the copyright in those designs & drawings shall remain vested with the Plumber and shall only be used by the Client at the written discretion & with written consent to do so.

## Severance Clause

48. If any words or provisions in this contract are unenforceable, the remainder of this contract shall remain effective.

49. The Plumber reserves that the right to review and makes changes to the term and conditions from time to time.