

1. Definition

- 1.1. "Plumber" shall mean Bellingen Plumbing Services and its successors and assigns.
- 1.2. "Client" shall mean the Client or any person acting on behalf of and the authority of the Client.
- 1.3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4. "Goods" shall mean Goods supplied by the Plumber to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5. "Services" shall mean all services supplied by the Plumber to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6. "Price" shall mean the cost of the Goods as agreed between the Plumber and the Client subject to clause 4 of this contract.

2. Acceptance

- 2.1. Any instructions received by the Plumber from the Client for supply of Goods and/or the Client's acceptance of Goods supplied by the Plumber shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Client has entered into this agreement, the Clients shall jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Plumber.
- 2.4. None of the Plumber's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Plumber in writing nor is the Plumber bound by any such unauthorised statements.
- 2.5. The Client undertakes to give the Plumber not less than fourteen (14) day prior written notice of any proposed change in the Client's name and/or other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number or business practice).

3. Goods

- 3.1. The Goods are as described on the invoices, quotations, work authorisation or any other work commencement forms as provided by the Plumber to the Client.

4. Price And Payment

- 4.1. At the Plumber's sole discretion the Price shall be either: (a) As indicated on invoices provided by the Plumber to the Client in respect of Goods supplied; or (b) The Plumber's quoted Price (subject to clause 4.2) which shall be binding upon the Plumber provided that the Client shall accept in writing the Plumber's quotation within (14) days.
- 4.2a. Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Plumber's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3. Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.4. At the Plumber's sole discretion, payment for approved Clients work shall be made in instalments in accordance with the Plumber's delivery/payment schedule.
- 4.5. At the Plumber's sole discretion, for certain approved Clients payment will be due seven (7) days following the date of the invoice.
- 4.6. Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by debit card, or by any other method as agreed to between the Client and the Plumber.
- 4.7. The Price shall be increased by the amount of GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Plumber.

5. Delivery Of Goods/Services

- 5.1. Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2. The Plumber may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.3. Delivery of Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.4. The Client shall take delivery of the Goods tendered notwithstanding that the quantity shall be either greater or less than the quantity purchased provided; (a) Such discrepancy in quantity shall not exceed 5%, and (b) The Price shall be adjusted pro rata to the discrepancy.
- 5.5. The failure of the Plumber to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6. The Plumber shall not be liable for any losses or damage whatever due to failure by the Plumber to deliver Goods (or any of them) promptly or at all.

6. Risk

- 6.1. If the Plumber retains property of Goods nonetheless, all risk for the Goods passes onto the Client on delivery.
- 6.2. If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Plumber is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Plumber is sufficient evidence of the Plumber's rights to receive the insurance proceeds without the need for any person dealing with the Plumber to make further enquires.

7. Warranty

- 7.1. For Goods not manufactured by the Plumber, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Plumber shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

8. Intellectual Property

- 8.1. Where the Plumber has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Plumber, and shall only be used by the Client at the Plumber's discretion.
- 8.2. The Client warrants that all designs or instructions to the Plumber will not cause the Plumber to infringe any patent, registered design or trademark in the execution of the Client's order.

9. Default & Consequences of Default

- 9.1. Interest on overdue invoices shall accrue from the date when the payment becomes due daily until the date of payment at a rate of 5.0% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Plumber from and against all the Plumber's costs and disbursements including on a solicitors and own client basis and in addition all of the Plumber's nominee costs of collection.
- 9.3. Without prejudice to any other remedies the Plumber may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Plumber may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Plumber will not be liable to the Client for any loss or damage the Client suffers because the Plumber exercised its rights under this Clause.
- 9.4. If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$80.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 9.5. In the event that: a) Any money payable to the Plumber becomes overdue, or in the Plumber's opinion the Client will be unable to meet its payments as they fall due; or b) The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

c) A receivers, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any assets of the Client, then without prejudice to the Plumber's other remedies at law;

d) The Plumber shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and e) All amounts owing to the Plumber shall, whether or not due for payment, immediately become payable in addition to interest payable under Clause 12.1 hereof.

10. Title

- 10.1. It is intention of the Plumber and agreed by the Client that property in the Goods shall not pass until: (a) The Client has paid all amounts owing for the particular Goods, and (b) The Client has met all other obligations due by the Client to the Plumber in respect of all contracts between the Plumber and the Client, and that where practicable the Goods shall be kept separate until the Plumber shall receive payment and all other obligations of the Client are met.
- 10.2. Receipt by the Plumber of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Plumber's ownership of rights in respect of the Goods shall continue.
- 10.3. It is further agreed that: (a) Until such time as ownership of the Goods shall pass from the Plumber to the Client the Plumber may give notice in writing to the client to return the goods or any of them to the Plumber. Upon such notice the rights of the Client to obtain ownership of any other interest in the Goods shall cease. (b) The Plumber shall have the rights of stopping the Goods in transit whether or not delivery has been made; and (c) The Client fails to return the Goods to the Plumber then the Plumber or the Plumber's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods. (d) The Client is only a bailee of the Goods and until such time as the Plumber has received payment in full for the Goods then the Client shall hold any proceeds from sale or disposal of the Goods on trust for the Plumber. (e) The Client shall not deal with the money of the Plumber in any way which may be adverse to the Plumber. (f) The Client shall not change the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Plumber. (g) The Plumber may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Plumber arising out of these terms and conditions, and the Plumber may take any lawful steps to require payment of the amounts due and the Price. (h) The Plumber can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client. (i) Until such time as ownership in the Goods passes to the Client, if the goods are so converted, the parties agree that the Plumber will be the owner of the end products.

11. **Cancellations** The Plumber may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by any given notice. The Plumber shall not be liable for any loss or damage whatever arising from such cancellation. At the Plumber's sole discretion the Client may cancel the delivery of Goods. In the event that the Client cancels delivery of Goods the Client shall be liable for any costs incurred by the Plumber up to the time of cancellation.

12. Unpaid Plumber's Rights to Dispose of Goods

- 12.1. In the event that: (a) The Plumber retains or regains possession or control of the Goods; and (b) Payment of the Price is due to the Plumber; and (c) The Plumber has made demand in writing of the Client for Payment of the Price in terms of this contract; and (d) The Plumber has not received the Price of the Goods, then, whether the property in the Goods has passed to the Client or has remained with the Plumber, the Plumber may dispose of the Goods and may claim from the Client the loss to the Plumber on such disposal.

13. Blocked Drain

13.1. The Client acknowledges being advised that the presence of plant/tree root growth and/or blockages generally indicates damaged drain/pipes. The Client acknowledges and agrees that these drains/pipes cannot be fixed by simply removing "plant/tree root growth" or the cleaning of the drain/pipes. Therefore, no warranty is provided for this situation arising again in the future and in respect of any work carried out in relation hereto. If the Plumber's equipment becomes lodged in the Customer's faulty drain/pipes it will be removed at the Customer's expense.

14. Rock and Filled Ground

14.1. Unless specifically stated in writing, our quotes/estimates do not include rock excavation, dewatering or supportive work such as pier and beams for filled or made up ground.

15. Buried or Unseen Services

15.1. In the event that buried or unseen services are disturbed or damaged, the Plumber will not be liable for any repair work and any repair work required will be paid at the owner's expense.

16. Guarantees

16.1. The Plumber guarantees the work for 7 years, excluding maintenance work. The Plumber will arrange to return to the property in question within 14 days to rectify the problem, or, in the unlikely event the Client is not satisfied with the completed work, the Plumber will arrange and pay for a competitor to finish the job. Money will not be returned to the Client, but the job will be rectified at no additional expense.

17. General

17.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2. All Goods and services supplied by the Plumber are subjected to the Fair Trading laws of NSW.

17.3. The Plumber shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Plumber of the terms and conditions.

17.4. In the event of any breach of this contract by the Plumber the remedies by the Client shall be limited to damages. Under no circumstances shall the liability of the Plumber exceed the price of Goods.

17.5. The Client shall not set off against the Price amounts due from the Plumber.

17.6. The Plumber may licence or subcontract all or any parts of its rights and obligations without the Client's consent.

17.7. The Plumber reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will effect from the date in which the Plumber notifies the Client of such change.

17.8. Neither party shall be liable to any default to any act of God, War, Terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

18. Discounts

- 18.1 Discounts will only apply to customers who make full payment upon completion of works.
- 18.2 Discounts do not apply to call out fee's, Reports, permits or materials
- 18.3 15% Discount will only apply to a maximum cost of \$10,000.00, a 10% discount will be applied for any quoted price between the sum of \$10,000.00 and \$20,000.00, Where at 15% discount Voucher has been presented
- 18.4 Limit 1 discount coupon per job or site visit.
- 18.5 No discounts apply to works, to the value of \$20,000.00 or more.
- 18.6 The valid discount period will be stated on the quotation