

1. **Definitions**

- 1.1 “Contractor” shall mean BH Plumbing Pty Ltd T/A Paul Turner Plumbing its successors and assigns or any person acting on behalf of and with the authority of BH Plumbing Pty Ltd T/A Paul Turner Plumbing.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Contractor to the Customer.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Materials” shall mean Materials:
(a) required to complete the Works; and/or
(b) supplied by the Contractor to the Customer (and where the context so permits shall include any supply of Works as hereinafter defined) and are as described on the invoices, quotation, order or any other forms as provided by the Contractor to the Customer.
- 1.5 “Equipment” shall mean all Equipment including any accessories supplied on hire by the Contractor to the Customer (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Customer.
- 1.6 “Works” shall mean all Works supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Materials as defined above).
- 1.7 “Price” shall mean the Price payable for the Materials as agreed between the Contractor and the Customer in accordance with clause 4 of this contract.

2. **The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)**

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. **Acceptance**

- 3.1 Any instructions received by the Contractor from the Customer for the supply of Materials and/or the Customer's acceptance of Materials supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Contractor.
- 3.4 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.
- 3.5 Works are undertaken (Materials are supplied) by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. **Price and Payment**

- 4.1 At the Contractor's sole discretion the Price shall be either:
(a) as indicated on invoices provided by the Contractor to the Customer in respect of Materials supplied; or
(b) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within sixty (60) days.
- 4.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the plan of scheduled Works or specifications of the Materials (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of the Contractor such as hard rock barriers below the surface or iron reinforcing rods in concrete, or as a result of increases to the Contractor in the cost of Materials and labour) will be charged for on the basis of the Contractor'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 At the Contractor's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Materials shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Contractor.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. **Delivery of Materials**

- 5.1 At the Contractor's sole discretion delivery of the Materials shall take place when:
(a) the Customer takes possession of the Materials at the Contractor's address; or
(b) the Customer takes possession of the Materials at the Customer's nominated address (in the event that the Materials are delivered by the Contractor or the Contractor's nominated carrier); or
(c) the Customer's nominated carrier takes possession of the Materials in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 At the Contractor's sole discretion the costs of delivery are:
(a) in addition to the Price; or
(b) for the Customer's account.

- 5.3 The Customer shall make all arrangements necessary to take delivery of the Materials whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Materials as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Subject to clause 5.5 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.5 The Works commencement date will be put back and the completion extended to whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for installation; or
 - (c) notify the Contractor that the site is ready.
- 5.6 Delivery of the Materials to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.7 The Contractor may deliver the Materials by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.8 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 5.9 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Materials (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.
- 6. Equipment Hire**
- 6.1 The Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that the Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Price of repair or replacement of the Equipment.
- 6.2 The Customer shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.
- 6.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 7. Risk**
- 7.1 If the Contractor retains ownership of the Materials nonetheless, all risk for the Materials passes to the Customer on delivery.
- 7.2 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 7.3 Where the Customer expressly requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such Materials shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all.
- 7.4 Where the Customer has supplied Materials for the Contractor to complete the Works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. The Contractor shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of Materials supplied by the Customer.
- 7.5 The Contractor is not responsible for the removal of rubbish (including but not limited to contaminated soil stockpiling of excess spoil) from or clean-up of the building/constructions site/s. This is the responsibility of the Customer or the Customer's agent. Under no circumstances will the Contractor handle removal of asbestos product.
- 8. Access & Damages**
- 8.1 The Customer shall ensure that The Contractor has clear and free access to the site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 9. Underground Locations**
- 9.1 Prior to the Contractor commencing the Works the Customer must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 9.2 Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.
- 10. Blocked Drain**
- 10.1 The Customer acknowledges and agrees that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Accordingly, the Customer agrees that these pipes cannot be fixed by simply removing

plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.

11. **Insurance**

11.1 The Contractor shall have public liability insurance of at least \$5m. It is the Customers responsibility to ensure that they are similarly insured.

12. **Title**

12.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:

- (a) the Customer has paid the Contractor all amounts owing for the particular Materials; and
- (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.

12.2 Receipt by the Contractor 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 Contractor's ownership or rights in respect of the Materials shall continue.

12.3 It is further agreed that:

- (a) where practicable the Materials shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Materials shall pass from the Contractor to the Customer the Contractor may give notice in writing to the Customer to return the Materials or any of them to the Contractor. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Materials shall cease; and
- (c) the Contractor shall have the right of stopping the Materials in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Materials to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Materials are situated and take possession of the Materials; and
- (e) the Customer is only a bailee of the Materials and until such time as the Contractor has received payment in full for the Materials then the Customer shall hold any proceeds from the sale or disposal of the Materials, up to and including the amount the Customer owes to the Contractor for the Materials, on trust for the Contractor; and
- (f) the Customer shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and
- (g) the Customer shall not charge the Materials in any way nor grant nor otherwise give any interest in the Materials while they remain the property of the Contractor; and
- (h) the Contractor can issue proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials may not have passed to the Customer; and
- (i) until such time that ownership in the Materials passes to the Customer, if the Materials are converted into other products, the parties agree that the Contractor will be the owner of the end products.

13. **Defects, Errors and Omissions**

13.1 The Customer shall inspect the Works on completion (or Materials on delivery) and shall within seven (7) days (time being of the essence) notify the Contractor of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Works (Materials) within a reasonable time following such notification if the Customer believes the Works (Materials) are defective in any way. If the Customer shall fail to comply with these provisions the Works (Materials) shall be presumed to be free from any defect or damage. For defective Works (Materials), which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Works (Materials), rectifying the Works or repairing the Materials except where the Customer has acquired Works (Materials) as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Works (Materials), rectification of the Works, replacement of the Works (Materials), or repair of the Materials.

13.2 At the sole discretion of the Contractor, Materials will not be accepted for return other than in accordance with 13.1 above.

14. **Warranty**

14.1 Subject to the conditions of warranty set out in clause 14.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within six (6) years of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

14.2 The conditions applicable to the warranty given by clause 14.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
- (c) in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

14.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

15. **Intellectual Property**

- 15.1 Where the Contractor has designed, drawn or written Materials for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion.
- 15.2 The Customer warrants that all designs or instructions to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 15.3 The Customer hereby authorises the Contractor to utilise images of the Materials designed or drawn by the Contractor in advertising, marketing, or competition material by the Contractor.

16. **Default and Consequences of Default**

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Contractor.
- 16.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.
- 16.4 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Contractor may suspend or terminate the supply of Materials to the Customer and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 16.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 16.6 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer 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 receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. **Security and Charge**

- 17.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17.1.

18. **Compliance with Laws**

- 18.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 18.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 18.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

19. **Dispute Resolution**

- 19.1 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 and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. 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 by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. **Cancellation**

- 20.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials at any time before the Materials are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Customer cancels the Works (the delivery of Materials), then the Customer shall be liable for any loss incurred by the Contractor (including, but not limited to, any amounts owing for Works already undertaken (Materials already supplied) and any loss of profits) up to the time of cancellation.

21. **Privacy Act 1988**

- 21.1 The Customer and/or the Guarantor/s agree for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Contractor.
- 21.2 The Customer and/or the Guarantor/s agree that the Contractor may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 21.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 21.4 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes and for other purposes as shall be agreed between the Customer and Contractor or required by law from time to time:
- (a) provision of Materials; and/or
 - (b) marketing of Materials by the Contractor, its agents or distributors in relation to the Materials; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Materials; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Materials.
- 21.5 The Contractor may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

22. **Building and Construction Industry Security of Payment Act 2002**

- 22.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 22.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

23. **General**

- 23.1 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 23.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions.
- 23.4 In the event of any breach of this contract by the Contractor the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Materials.
- 23.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.7 The Customer agrees that the Contractor may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.