

DAWSON PLUMBING TERMS & CONDITIONS

1. Definitions

1.1 "Contractor" means Ben Dawson Plumbing, trading as Dawson Plumbing, its successors and assigns or any person acting on behalf of and with the authority of Ben Dawson Plumbing.

1.2 "Customer" means the person/s buying materials as specified in any invoice, document, or order, and if there is more than one customer is a reference to each customer jointly and severally.

1.3 "Materials" means all Materials or Works supplied by the Contractor to the customer at the customers' request from time to time (where the context permits the terms "Materials" or "Works" shall be interchangeable for the other)

1.4 "Equipment" means all Equipment including any accessories supplied on hire by the contractor to the Customer (and where the context 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.

1.5 "Price" means the Price payable for the materials as agreed between the Contractor and the Customer in accordance with clause 3 Below.

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of Materials/Equipment.

2.2 These terms and conditions may only be amended with the Contractors consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor.

2.3 In the event that the Contractor is required to provide the works urgently, that may require the Contractors staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends, and or Public Holidays) then the Contractor reserves the right to charge the Customer additional labour costs (Penalty rates will apply), unless otherwise agreed between the Contractor and the Customer in writing.

3 Price and Payment

3.1 At the Contractors sole discretion the Price shall be either:

(a) as indicated on any invoice provided by the Contractor to the Customer; or

(b) the Contractor's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

3.2 The Contractor reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or

(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

(c) where additional works are required due to the discovery of hidden or unidentifiable difficulties such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, discovery of asbestos, prerequisite work by any third party not being completed, change of design, hard rock barriers below the

surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc. which are only discovered on commencement of the Works; or

(d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractors control.

3.3 at the Contractors sole discretion a non-refundable deposit may be required.

3.4 Time for payment for the Materials/Equipment being of the essence, the Price will be payable by the Customer on the dates/s determined by the Contractor, which may be;

(a) On delivery of the Materials/Equipment

(b) For certain, approved customers, due within thirty (30) days, by the end of the month in which a statement is posted to the Customer's address / email/ or physically handed to the Customer.

(c) The date specified on any invoice or other form as being the date for payment; or

(d) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.

3.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, EFTPOS, or by any other method agreed to between the Contractor and the Customer.

4. Delivery of Materials /Equipment

4.1 At the Contractors sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

4.2 Subject to clause 3.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.

4.3 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer notice) where completion is delayed by an event beyond the Contractors control, including but not limited to any failure by the Customer to;

(a) Make a selection; or

(b) Have the site ready for the Works; or

(c) Notify the contractor that the site is ready .

4.4 Any time or date given by the Contractor to the Customer is an estimate only. The customer must still accept delivery of the Materials/Equipment even if late and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

5.Risk

5.1 Risk of damage to or loss of the Materials passes to the Customer on Delivery and the Customer must insure the Materials on or before Delivery.

5.2 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.

5.3 The installation of some appliances can cause water hammer or damage to existing pipe work. The Customer agrees to indemnify the Contractor against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.

5.4 In the event that the contractor discovers asbestos/hazardous materials whilst undertaking any Works the Contractor shall immediately advise the Customer of the same and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs (howsoever arising) incurred by the Contractor as a result of the discovery of asbestos/hazardous materials and/or any suspension of works in relation thereto.

5.5 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/Works sites. This is the responsibility of the Customer or the Customer's agent, unless prior arrangement with the Contractor is made.

6. Access

6.1 The Customer shall ensure that the Contractor has clear and free access to the work 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.

7. Hidden Mains and Works

7.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all hidden mains, pipes, and services on the site and clearly mark the same. The hidden mains & services the customer must identify include but are not limited to, Electrical services, Gas services, Sewer services, pumping services, Sewer connections, water mains, irrigation pipes, telephone cables, fibre optic cables, and any other services that may be on site.

7.2 Whilst the Contractor will take all care to avoid damage to any hidden 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 7.1.

8 Title to Materials

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

- (a) The customer has paid the Contractor all amounts owing to the Contractor; and
- (b) The Customer has met all of its other obligations to the Contractor.

8.2 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.

9. Customer's Disclaimer

9.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the customer by the Contractor and the Customer acknowledges that the Materials are bought relying solely upon the Customer's skill and judgment.

10 Defects

10.1 The Customer shall inspect the Materials/ Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Materials/Equipment within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials/Equipment shall be presumed to be free from any defect or damage. For defective Materials/Equipment, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractors liability is limited to either (at the Contractors discretion) replacing the Materials/Equipment or repairing the Materials/Equipment.

10.2 Materials/Equipment will not be accepted for return for any reason other than those specified in clause 11.1 above.

11 Return of Materials

11.1 Return of Materials will only be accepted provided that :

- (a) The Customer has complied with the provisions of clause 10.1; and
- (b) The Contractor has agreed in writing to accept the return of Materials; and
- (c) The Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) The Contractor will not be liable for Materials which have not been stored or used in a proper manner; and
- (e) The Materials are returned in the condition in which they were delivered and with all packaging material, brochures, and instruction material in as new condition as is reasonably possible in the circumstances.

12 Warranty

12.1 Subject to the conditions of warranty set out in Clause 12.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within ninety (90) days of the date of delivery (time being of the essence) then the Contractor will either (at the Contractors sole discretion) replace or remedy the workmanship.

12.2 The conditions applicable to the warranty given by Clause 12.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly cause 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 instruction 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 been 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.

12.3 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 which is given by the manufacturer of the Materials.

12.4 To the extent permitted by statute, no warranty is given by the Contractor as to the suitability or quality of the Materials for any purpose and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

12.5 In the case of second hand Materials, the Customer acknowledges that he/she has had full opportunity to inspect the same and that he/she accepts the same with all faults and that no warranty is given by the contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials or caused by the Materials or any part thereof howsoever arising.

12.6 Warranty is not provided for any Works requested by the Customer which are not exclusively covered under the Plumbing/Gas fitting licence. This includes but is not limited to; tilling, concreting, and gyprocking.

13 Intellectual Property.

13.1 Where the Contractor has designed, drawn, or developed Materials/Equipment for the Customer, then the copyright in any designs or drawings and documents shall remain the property of the Contractor.

13.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in execution of the Customer's orders 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.

13.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Materials which the Contractor has created for the Customer.

14 Default and Consequences of Default

14.1 Interest and account keeping fees on overdue invoices shall accrue weekly from the date when payment becomes due, until the date of payment, at a rate of \$33 (Thirty Three Australian Dollars) per calendar week. (and at the Contractors sole discretion such fees shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debit (including but not limited to internal administration fees, legal costs on a solicitor and own lien t basis, the Contractor's collection agency costs, and bank dishonour fees).

14.3 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) under these terms and conditions the Contractor may suspend or terminate the supply of Materials/ Equipment to the Customer. 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.

14.4 Without prejudice to the Contractors 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 if:

(a) Any money payable to the Contractor becomes overdue, or in the Contractors opinion the Customer will be unable to make a payment when it falls due;

(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.

14.5 Prior to commencement of any Works the Contractor shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped off until the fault is found and repaired at the Customers expense. On completion of the soundness check, if the site is deemed safe, it is considered so until such time that Works are completed by the Contractor, the Customer is hereby made aware that the Contractor cannot provide warranty on the basis of a soundness check alone – this check is performed for the safety of any Contractor on site.

14.6 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may be subject to fail due not to being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and valves on pilot assemblies any costs associated with such an event shall be borne by the Customer.

14.7 The Customer warrants that any existing plumbing, gas fitting, and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with any regulations. The Contractor reserves the right to halt all Works if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Contractor will charge a standard fee for the time spent on worksite based on the Contractors quotation.

15 Cancellation

15.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials/Equipment at any time before the Materials/Equipment are due for delivery by giving notice to the Customer.

15.2 in the event that the customer cancels delivery of the Materials/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirectly) by the Contractor as a direct result of the cancellation (including but not limited to any loss of profits).

15.3 Cancellation of orders for Materials made to the Customers specifications, or for non-stock list items, will definitely not be accepted once production has commenced or an order has been placed.

16 General

16.1 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 Contractors right to subsequently enforce that provision. 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.

16.2 These terms and Conditions and any contract to which they apply shall be governed by the laws of Australia and are subject to the jurisdiction of the courts of Australia.

16.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and or consequential loss and or expense (including loss to profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions.