

1 Definitions

- 1.1 "Contractor" shall mean Peter Sayers Plumbing Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Peter Sayers Plumbing Pty Ltd.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Works" shall mean all Works (including the supply of Materials) undertaken by the Contractor and described on invoices, quotation, work authorisation or any other forms and includes any advice or recommendations provided by the Contractor to the Client.
- 1.5 "Materials" shall mean Materials supplied by the Contractor to the Client (and where the context so permits shall include any supply of Works as defined above).
- 1.6 "Price" shall mean the cost of the Works as agreed between the Contractor and the Client subject to clause 4 of this contract.

2 Acceptance

- 2.1 In the event the Client requires domestic building works under the Home Building Act 1989 then this contract will not apply. Domestic building works under the Home Building Act 1989 require a specialised contract which will be provided by the Contractor.
- 2.2 Any instructions received by the Contractor from the Client for the supply of Works and/or the Client's acceptance of Works supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.3 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.4 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Contractor.
- 2.5 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

3 The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 3.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

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 Client in respect of Works supplied; or
 - (b) the Contractor's current Price at the date of delivery of the Works according to the Contractor's current schedule of rates; or
 - (c) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 4.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation.
- 4.3 At the Contractor's sole discretion a deposit may be required.
- 4.4 The Contractor may submit a detailed payment claim at intervals not less than one month for Works performed up to the end of each month. The value of Works so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of Materials delivered to the site but not installed.
- 4.5 At the Contractor's sole discretion:
 - (a) payment shall be due on delivery of the Materials / completion of the Works; or
 - (b) payment for approved Clients shall be made by instalments in accordance with the Contractor's payment schedule.
- 4.6 Time for payment for the Works 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.
- 4.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Contractor reserves the right to treat retentions as placing the Client's account into default.
- 4.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5.0%) of the Price) or by direct credit, or by any other method as agreed to between the Client and the Contractor.
- 4.9 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 Price Exclusions

- 5.1 Unless expressly agreed to between the Contractor and the Client, the Price shall not include:
 - (a) excavation of any kind, the removal or disposal of spoil/rubbish or the restoration of landscaped areas that may have been disturbed during the Works; and
 - (b) the laying of sewer drainage on filled or water charged ground.

6 Variations

- 6.1 The Price has been calculated on the basis of a site inspection prior to the commencement of the Works. Any variation from the plan of scheduled Works or specifications (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) will be detailed in writing and charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice.

- 6.2 In the event of unforeseeable problems with the site which are only revealed when undertaking the Works the Contractor may carry out any Work needed to fix any such problem if the Contractor considers it necessary for satisfactory and safe completion of the Works. Any additional Work necessary due to unforeseen problems is to be treated as a variation. However if a Price is not agreed upon then the Client will be charged at the Contractor's actual cost plus 10% for the Works.
- 6.3 In the event of a variation (requested by either the Contractor or the Client), the Contractor will give the Client a written variation document detailing the Works, the reason for the variation, the Price, the estimated time to undertake the variation, and the likely delay, if any and require written acceptance of the variation before commencing work on the variation.
- 6.4 The Price stated in the Contractor's quotation is calculated on the basis that the Works shall be executed during the Contractor's standard trading hours. In the event the Contractor is required to deliver the Works (or part of the Works) outside these ordinary working hours, then the additional cost incurred by the Contractor shall be treated as a variation to the Price.
- 6.5 The Client acknowledges that any variation or additional Works not detailed shall be charged at seventy seven dollars (\$77.00) per hour, plus any Materials. Payment for all variations must be made in full at their time of completion.

7 Delivery Of Works

- 7.1 Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works commencement date will be put back and the building period extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for installation; or
 - (c) notify the Contractor that the site is ready.
- 7.3 Delivery of the Works to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.4 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 7.6 The Contractor shall not be liable for any loss or damage whatever due to failure by the Contractor to deliver the Works (or any of them) promptly or at all.

8 Damages

- 8.1 The Contractor shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of the Contractor (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

9 Underground Locations

- 9.1 Prior to the Contractor commencing any Works the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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, Telstra 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 Client 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 Client acknowledges and agrees that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Accordingly the Client 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 Works carried out in relation hereto.
- 10.2 In the event that any of the Contractor's equipment becomes lodged in the Client's faulty drain the Client will be liable for all costs incurred by the Contractor in retrieving and/or repairing the equipment.

11 Indemnity and Liability

- 11.1 The Client indemnifies the Contractor against any liability or claim arising out of damage to the premises, the work site or movable property left at the site where the work is to be executed or in respect of injury to any person on the site or premises with the permission of the Client, provided that Contractor is not guilty of negligence that causes the injury or damage.

12 Insurance

- 12.1 The Contractor shall insure against:
- (a) Liability under the Worker's Compensation Act and at common law in respect of persons employed by the Contractor; and

- (b) Liability to third persons in respect of personal injury and property damage; and
- (c) Loss or damage to Works in progress.

13 Compliance with Laws

- 13.1 The Client 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.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 The Client 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.

14 Risk

- 14.1 If the Contractor retains ownership of the Works nonetheless, all risk for the Works passes to the Client on delivery.
- 14.2 If any of the Works are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Works. 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.

15 Title

- 15.1 It is the intention of the Contractor and agreed by the Client that ownership of Materials shall not pass until:
 - (a) the Client has paid all amounts owing for the particular Materials; and
 - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 15.2 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 Materials shall continue.
- 15.3 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 Client are met; and
 - (b) until such time as ownership of the Materials shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Materials or any of them to the Contractor. Upon such notice the rights of the Client 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 Client fails to return the Materials to the Contractor then the Contractor or the Contractor'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 Materials are situated and take possession of the Materials; and
 - (e) the Client is only a bailee of the Materials and until such time as the Contractor has received payment in full for the Materials then the Client shall hold any proceeds from the sale or disposal of the Materials, up to and including the amount the Client owes to the Contractor for the Materials, on trust for the Contractor; and
 - (f) the Client shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and
 - (g) the Client 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 Client; and
 - (i) until such time that ownership in the Materials passes to the Client, if the Materials are converted into other products, the parties agree that the Contractor will be the owner of the end products unless they have become fixtures.

16 Defects

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

17 Warranty

- 17.1 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.
- 17.2 To the extent permitted by statute, no warranty is given by the Contractor as to the quality or suitability of the Works for any purpose and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Works, or caused by the Works, or any part thereof however arising.

18 Intellectual Property

- 18.1 Where the Contractor has designed, drawn or written Works for the Client, then the copyright in those designs and drawings shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.
- 18.2 The Client 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 Client's order.

19 Default & Consequences of Default

- 19.1 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 one 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.
- 19.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Contractor.
- 19.3 If the Client defaults in payment of any invoice when due, the Client 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.
- 19.4 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor exercised its rights under this clause.
- 19.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 19.6 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 Client which remains unperformed 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 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 receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20 Security And Charge

- 20.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:
- (a) where the Client is the owner of land, realty or any other asset capable of being charged, the Client agrees 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 the terms and conditions. The Client acknowledges and agrees that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released 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 Client 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 Client agrees to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 20.1.

21 Cancellation

- 21.1 The Contractor may cancel these terms and conditions or cancel delivery of Works at any time before the Works are delivered by giving written notice. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.
- 21.2 In the event that the Client cancels delivery of Works the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

22 Privacy Act 1988

- 22.1 The Client 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 Client and Guarantor/s in relation to credit provided by the Contractor.
- 22.2 The Client and/or the Guarantor/s agree that the Contractor may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 22.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 22.4 The Client 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 Client and Contractor or required by law from time to time:
- (a) provision of Works; and/or
 - (b) marketing of Works by the Contractor, its agents or distributors in relation to the Works; and/or

- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Works; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 22.5 The Contractor may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

23 Building and Construction Industry Security of Payments Act 1999

- 23.1 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 Payments Act 1999 may apply.
- 23.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

24 Dispute Resolution

- 24.1 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.

25 General

- 25.1 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 25.3 The Contractor 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 Contractor of these terms and conditions.
- 25.4 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Contractor exceed the Price of the Works.
- 25.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Contractor.
- 25.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.7 The Contractor reserves the right to 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 Client of such change.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 25.9 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.