

## **APPLICATION OF THESE TERMS AND CONDITIONS**

The Customer agrees that prior to placing an order with the Contractor, the Customer has read and agreed to the terms and conditions as set out hereunder.

### **1. Definitions**

- 1.1 "MBP" means Scott J Mothersole Plumbing Pty Ltd T/A My Brisbane Plumber its successors and assigns or any other person acting on behalf of and with the authorities of My Brisbane Plumber;
- 1.2 "Contractor" means Scott J Mothersole Plumbing Pty Ltd T/A My Brisbane Plumber and/or employees, authorised agents and permitted assigns;
- 1.3 "Customer" means a Customer and/or any agent or assigns of the Customer;
- 1.4 "Guarantor" means a person who agrees to be liable for the debts of the Customer;
- 1.5 "Goods" means plumbing products and associated components as more particularly described on the Contractor's quotes, tax invoices and other paperwork supplied to the Customer;
- 1.6 "Site" means the place where the Contractor's work will be carried out;
- 1.7 "Price" means the price payable for the services as agreed between the Contractor and the Customer in accordance with clause 5 of these Terms and Conditions
- 1.8 "GST" means Goods and Services Tax as defined within the "New Tax System (Goods and Services Tax) Act 1999" (Cth).

### **2. Interpretation**

Reference to-

- 2.1 The singular includes the plural and the plural includes the singular;
- 2.2 A person includes a body corporate;
- 2.3 A party includes the parties, directors, agents, executors, administrators, successors and permitted assigns;
- 2.4 A provision of this agreement must not be construed to the disadvantage of a party merely because that part was responsible for the preparation of the agreement or the inclusion of the provision in the agreement.

### **3. Acceptance of Terms and Conditions**

- 3.1 Receipt of instructions by MBP from the Customer for the supply of and/or acceptance of goods/services is deemed acceptance of the terms and conditions herein on the part of the Customer.
- 3.2 These terms and conditions, having been accepted, cannot be rescinded other than as provided for within these terms and conditions and are irrevocable unless by written agreement between the Customer and the Contractor.
- 3.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transaction (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **4. Authority**

- 4.1 The Customer hereby acknowledges that the MBP's agents, representatives or employee are NOT authorised to make any representations, statements, assertions or agreements not expressed by the MBP's Manager in writing. MBP is not bound by any such unauthorised statements.

### **5. Price**

- 5.1 At MBP's sole discretion the price shall be either;
  - (a) As indicated on any invoice provided by MBP to the customer; or
  - (b) MBP's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 MBP reserves the right to change the price if a variation to MBP's quotation is requested. Any variation from the plan of scheduled works (including, but not limited to, any variation as a result of increases to MBP in the cost of materials and labour or where additional services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to poor weather conditions, limitations to accessing the site, obscured building defects, safety conditions, prerequisite work by any third party not being completed,

## **6. Quotes**

- 6.1 MBP shall give the Customer a quote specifying the work required to be done in order to fulfill the Customer's instructions and an estimate of the MBP's charge for the performance of work;
- 6.2 Acceptance by the Customer;
- 6.3 Where MBP has given the Customer a quote, MBP need not commence work until the quote has been accepted by the Customer;
- 6.4 The Customer shall accept the quote by signing and returning a copy of the quote and/or work authorisation form accompanied with a purchase order number (if applicable). A signed fax or scanned copy will be binding for the purpose of these terms and conditions;
- 6.5 Quotes are valid for thirty (30) days only, unless an extension has been authorised by MBP;
- 6.6 In acceptance of the quote, the Customer warrants that it has not relied on any representation by MBP other than as supplied in writing in the quote;
- 6.7 The version of these terms and conditions appearing on MBP website as at the date of signing by the Customer of the quote or the date of the issuing of any variation by MBP shall bind the Customer and Client.

## **7. Variations**

- 7.1 All variations must be in writing and signed by a duly authorised representative of MBP. Variations to an accepted quote or contract will incur additional costs to the Customer.
- 7.2 Variations within a period subject to a progress payment shall be payable at the same time as that progress payment is due and payable.
- 7.3 All quotations are based on excavation of clean soils, rock excavation, dewatering or supportive work such as pier and beams for filled or made up ground will be charged out as a variation to the original price unless specifically included in written quotes and/or estimates.

## **8. Cancellation**

- 8.1 The Customer must provide MBP with at least 5 working days' notice in writing of any cancellation of works. Failure to do so will result in any deposit being forfeited or, if no deposit has been paid, the Customer must pay to MBP 20% of the original quoted/invoice amount, payable by the Customer within 7 days of receipt of an invoice for that amount;

## **9. Prolongation**

- 9.1 MBP shall not be held liable for any such delays for work not being completed due to weather conditions, shortage of labour hire, machinery or materials outside the direct control of MBP.
- 9.2 Should work at the site be held up for reasons beyond MBP's control, then the Customer shall indemnify MBP from any increased costs, losses or expenses due to such prolongation.

## **10. Dial Before You Dig**

- 10.1 When MBP is engaged to undertake underground plumbing work, the Customer shall obtain plans of underground pipes and cables on the site at least two clear working days before MBP proposed work on the site. These plans can be requested from the DBYD (Dial Before You Dig) website at [www.1100.com.au](http://www.1100.com.au) or phone 1100.
- 10.2 Should the Customer fail to provide MBP with the appropriate plans for the site as specified in clause 10.1 the Customer will indemnify MBP from any claim for costs, expenses or losses from a third party for any damage to third party property, including the asset owner.

## **11. Delivery of Goods**

- 11.1 MBP may deliver goods/services to the Customers nominated address;
- 11.2 The Customer shall make all arrangements necessary to take delivery of the goods when they are tendered for delivery;
- 11.3 Delivery of goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement;
- 11.4 The failure of MBP to deliver shall not entitle either party to treat this contract as repudiated. MBP shall not be liable for any loss or damage whatever due to the failure by MBP to deliver the goods (or any part of them) promptly or at all;
- 11.5 The Customer shall indemnify MBP from any costs incurred should site access not be available and subsequently MBP is unable to make delivery.

## **12. Site Access**

- 12.1 The Customer shall ensure that MBP has a clear and uninterrupted access to the site until work has been completed and MBP paid in full.
- 12.2 The Customer shall indemnify MBP from additional costs or penalties if the completion of the work is delayed due to interrupted site access.
- 12.3 The Customer shall:
- a) Ensure the Customer or its representative remains on the job site during the performance of MBP's work;
  - b) Sign off that the work has been completed by MBP in accordance with the quote or work authorisation form; and
  - c) Indemnify MBP from any claims or charges relating to damage and/or loss of property from the site if the Customer has not complied with the conditions specified in 12.1

## **13. Blocked Drains**

### **13.1 Blocked drains**

- 13.1.1 The presence of plant/tree root growth and/or blockages generally indicates damaged pipes. No warranty is provided in relation to future blockages reoccurring in such instances
- 13.1.2 Should Close Circuit Television (CCTV) equipment be used the Customer acknowledges an additional charge may be imposed.
- 13.1.3 Should any of MBP's equipment become lodged in the Customer's faulty drain it will be removed at the Customer's expense or monetary compensation to the total replacement value will become payable to MBP within seven (7) days.

## **14. Buried or Unseen Services**

- 14.1 The Customer will indemnify MBP and keep MBP indemnified against any liability, loss, claim or proceedings of any kind (whether arising under statute or common law) arising from services which are buried or unseen being disturbed or damaged. MBP will not be liable for any repair work and any repair work required will be paid at the Customers expense.

Such liability, loss, claims or proceedings includes but is not limited to:

- a) Damage to the property, real or personal;
- b) Death or personal injury; and
- c) Consequential or economic loss of any kind.

## **15. Risk**

- 15.1 The Risk in the goods shall pass to the Customer upon delivery/installation of the goods to the customer or to a third party nominated by the Customer.

## **16. Payment**

- 16.1 The Customer must pay MBP the total amount set out in the invoice within the specified time in MBP's quote and/or work authorisation form.
- 16.2 Deposit.
- 16.2.1 If a deposit is so requested by MBP the Customer acknowledges MBP is under no obligation to undertake any work until the deposit is received by MBP in full and when all details pertaining to the contract are finalised.
- 16.2.2 In the event of default as to payment owing to MBP on the part of the Customer, MBP shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to MBP at law or in equity.
- 16.3 In the event that agreed progress payments are not honoured by the Customer, MBP may halt any further work until such time as the outstanding payment is made;
- 16.4 The provisions of the Building Industry Fairness (Security Payment) Act 2017 apply to this contract;
- 16.5 MBP may charge interest at the rate of two percent (2%) above the commercial lending rate of MBP's bank or financial institution calculated on a daily basis on amounts not paid within the time specified in the agreed quote and/or work authorisation form;
- 16.6 The Customer indemnifies MBP for all costs, expenses or losses incurred by MBP as a result of the Customer's failure to pay to MBP all sums outstanding as owed by the Customer to MBP including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment.

## **17 Retention of Title**

- 17.2 Notwithstanding the delivery or installation of the goods, title in any particular goods shall remain with MBP until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by MBP for the goods, including all applicable GST and other taxes, levies and duties. Where the goods have been on sold by the Customer, the Customer will be taken to hold the proceeds of sale of such goods upon trust for MBP and to account to MBP for these products;
- 17.3 Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge MBP's title in the goods nor the Customer's indebtedness to MBP and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.
- 17.4 If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, MBP is entitled to receive all insurance proceeds payable for the goods. The production of these Terms and Conditions by MBP is sufficient evidence of MBP's rights to receive the insurance proceeds.
- 17.5 The Customer acknowledges that it is in possession of the goods solely as bailee until payment of all invoices for the goods is made pursuant to clause 16.1
- 17.6 And until that time:
- a) The Customer must not encumber or otherwise charge the goods; and
  - b) The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following the delivery or installation of the goods to the Customer.
- 17.7 The Customer hereby irrevocably grants to MBP the right, at its sole discretion, to remove or repossess and goods from the Customer and sell or dispose of them, and MBP shall not be liable to the Customer or any person claiming through the Customer and MBP shall be entitled to retain the proceeds of any goods sold and apply same towards the Customer's indebtedness to MBP and shall not be liable for any loss occasioned thereby.
- 17.8 If the Customer commits an act of bankruptcy, enters into any form of external administration, receivership or liquidation, makes any composition or arrangement with its creditors, receives a creditor's statutory demand that is not satisfied within 7 days or ceases to carry on business or breaches any fundamental clause of the agreement, the MBP may, without prejudice to any other remedies it may have, repossess any goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance any monies owing MBP by the Customer.

## **18 Personal Property Securities Act 2009 ("PPSA")**

- 18.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.
- 18.2 The Customer acknowledges and agrees:
- a) That these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
    - i. Previously supplied by MBP to the Customer
    - ii. To be supplied in the future by MBP to the Customer
  - b) That the Security Interest created by these Terms and Conditions is a continuing Security Interest in all goods (supplied now or in the future by MBP to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until MBP has signed a release;
  - c) To waive its rights in relation to the sections listed in sub-section 115(1) of the PPSA (or otherwise amended), which will not apply (to the extent, if any, mentioned) to the Security Agreement created by these Terms and Conditions.
- 18.3 The Customer undertakes to:
- a) Keep all goods free of any charge, lien or Security Interest except as created under these Terms and Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of MBP under these Terms and Conditions of the PPSA.
  - b) Sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that MBP may require to:
    - i. Register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register'
    - ii. Register any other document required to be registered by the PPSA; or
    - iii. Correct a defect in a statement referred to in clause 16.3(b) (i) or 16.3(b) (ii);
  - c) Indemnify, and upon demand reimburse, MBP for all fees (including actual legal fees on a solicitor/own customer basis), costs, disbursements and expenses in:
    - i. Registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any goods charged thereby; and
    - ii. Enforcing or attempting to enforce the Security Interest created by these Terms and Conditions.

- d) Not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the goods or proceeds in favour of a third party, without the prior written consent of MBP; and
- e) Immediately advise MBP of any material change in its business details (including, but not limited to, its trading name, address, facsimile number) or business practices.

## **19 Warranty**

- 19.1 Any warranty as to the goods shall be limited to the written warranty provided by the manufacturer to the Customer on or before installation of the goods.
- 19.2 Any warranty shall become null and void in the event that the goods are modified, altered, damaged or put to any undue stress other than in the way the goods were designed to perform.
- 19.3 MBP shall not provide warranty on goods supplied by the Customer to be used in the work by MBP
- 19.4 In respect of all claims MBP shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/goods or in properly assessing the Customer's claim.

## **20 Liability**

- 20.1 The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions and their rights and remedies conferred on the Customer in relation to the provision of the goods and services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights")
- 20.2 MBP disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of MBP for a breach of a Non-excludable Right is limited, at MBP's option, to the supplying of the goods and/or any services again or payment of the cost of having the goods and/or services supplied again.
- 20.3 Notwithstanding any other provisions of these Terms and Conditions, MBP is in no circumstances (whatever the clause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:
  - a) Any increased costs or expenses;
  - b) Any loss of profit, revenue, business, contracts or anticipated savings;
  - c) Any loss or expense resulting from a claim by a third party; or
  - d) Any special, indirect or consequential loss or damage of any nature whatsoever caused by MBP's failure to complete or delay in delivering the goods or completed the work.
- 20.4 MBP will have no liability to the Customer in relation to any loss, damage or expense caused by MBP's failure to deliver the goods or complete the work as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war the inability of MBP's normal suppliers to supply necessary material or any other matter beyond MBP's control.

## **21 Privacy**

- 21.3 The Customer hereby authorises MBP to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by MBP, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.
- 21.4 MBP may give information about the Customer to a credit reporting agency for the purpose of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

## **22 Security & Charge**

The Customer hereby charges all property both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to MBP under these terms and conditions or otherwise and hereby authorises MBP or its solicitors to execute any consent form and its attorney for the purpose of registering a caveat over any real property owned by the Customer at any time.

## **23 Permits**

It is the responsibility of the Customer to ensure that all necessary permits, permissions or authorisations are obtained for the work carried out on site.

## **24 Intellectual Property**

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

## **25 General Matter**

- 25.1 A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 25.2 Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purpose of that jurisdiction if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 25.3 These Terms and Conditions are governed by the law of Queensland, and the parties submit to the exclusive jurisdiction of the Queensland Courts.

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