

CONDITIONS OF CONTRACT

THIS CONTRACT IS EFFECTIVE FROM THE DATE IT IS SIGNED BY THE CUSTOMER

1. This contract is effective from the date it is signed by both parties or on the part or whole performance of the Works by the Contractor.

EFFECT OF CONTRACT

2. Any variation or termination may only be made in accordance with the terms of the contract.
3. Any deposits made will not be refundable other than as provided in the contract.
4. Where the Client is a corporation or partnership, its directors or partners agree to be bound by this contract jointly and severally.

CONTRACT PRICE AND PAYMENT

5. The Client shall pay the Contractor the Contract Price and the price of any variation in accordance with this contract.
6. The Contract Price shall be paid no later than 7 days from the Completion Date or the date of the invoice.
7. If the Contract Price is to be divided into progress payments such payments shall be paid no later than 7 days from the date of the invoice relating to the progress payment.
8. All prices are calculated on the basis of existing costs for labour, fixtures and materials at the date of pricing and for 30 days after. If the contract is not signed by the Client within 30 days of receiving it the price may be varied. If the client does not wish to proceed for the new price the contract will lapse.
9. Where Prime Cost Items and/or provisional sums have been included in the Contract Price and a greater amount is spent than the allowance, the Client shall pay the difference to the Contractor within 7 days of the date of dispatch of the invoice. Prime Cost Items are fittings, materials and products provided by the Contractor at the specific direction of the Client and at the cost of the Client or provided by the Client at no cost to the Contractor, but the installation or use of which may incur costs additional to those allowed for in the contract price.
10. Warranties on Prime Cost Items will be the warranties of the manufacturer. This contract makes no provision for costs associated with the removal or installation of Prime Cost Items that must be replaced under manufacturers' warranty.
11. The Contractor will take all reasonable care to ensure that Prime Cost Items are fit for purpose.
12. This contract makes no provision for the excavation, removal and cartage of excess soil, rock or reef materials that may be encountered during excavations. The Client must pay the Contractor the costs of excavation/ removal of all excess soil, rock and/or reef material.
13. This contract makes no provision for the costs associated with the identification or removal and cartage of Asbestos Containing Material (ACM) that may be encountered during completion of Works. Costs associated with the identification.
15. The Client acknowledges that pipes affected by root growth and or blockages are generally damaged as a result of such interference. The removal of root growth and/or blockages alone carries no warranty that similar problems will not recur unless permanent repairs are made to the affected pipework.
16. Where additional work is agreed for special treatment and/or replacement of damaged drains due to the proximity of tree roots/blockages, filled ground or like conditions, the additional costs of drain inspection and clearing equipment concreting, use of cast iron or other special treatment or replacement work shall constitute a variation and such variation shall permit an additional charge for such work.
17. Where drain inspection or clearing equipment including but not limited to cables and hoses becomes jammed as a result of damaged drains or blockages, the Contractor will be entitled to take reasonable action to retrieve such items. Costs associated with the retrieval of inspection and clearing equipment shall constitute a variation and such variation shall permit an additional charge for such work.
18. The Contract Price for the Works is based upon the assumption that all existing installations comply with law, regulations and relevant Australian Standards. Any work required to bring existing installations into compliance with law, regulation and relevant Australian Standards shall constitute a variation.
19. The Contract Price for the Works is based upon the assumption that the Contractor will have access to the site during normal working hours at which the Works are carried out. If the Contractor's access to the site is impeded in any way, this shall constitute a variation.
20. If the Client fails to make any payment, the Contractor may charge interest on the outstanding amount/s at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) from the due date of payment until the date of full payment.
21. The Client is liable for all reasonable costs and expenses incurred by the Contractor or by any third party engaged by the Contractor incidental to and arising out of late payments of amounts due under this contract.
22. The property in the goods sold and delivered pursuant to this contract ("Goods") shall remain with the Contractor until full payment is made by the Client to the Contractor together with all charges for extra materials and/or works made in accordance with this contract.
23. The Client agrees:
 - (a) that, pursuant to the Personal Property Securities Act 2009 ("PPSA"), this contract creates a security interest in all Goods (and proceeds of Goods) in favour of the Contractor to secure the purchase price for the Goods;
 - (b) that the following sections of the PPSA do not apply: 95, 118, 121 (4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142, 143 and, to the extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Contractor elects in writing to retain Part 4.3 (which the Contractor may elect to do either in whole or in part);
 - (c) to waive its right to receive notice of a verification statement in relation to registration of a security interest; and
 - (d) the Contractor may recover from the Client the cost of doing anything under this clause 20, including registration fees.

GOODS AND SERVICES TAX

24. The Contract Price includes Goods and Services Tax (GST) which shall be applied according to law.

CONTRACTOR'S OBLIGATIONS

25. The Works shall be commenced on the Commencement Date. The Contractor will use reasonable endeavours to complete the Works by the Completion Date but is not liable in any manner if the Works are not completed by the Completion Date. The Client hereby releases the Contractor from any claim, liability or damages that may arise if the Works are not completed by the Completion Date.
26. The Contractor shall perform all work in a professional manner as required in Australian Standards and the MPMSAA Code of Ethics.
27. The Contractor shall perform all work in accordance with Occupational Health and Safety requirements.
28. The Contractor shall handle any fixtures, fittings, materials and/or equipment provided by the Client with reasonable care.
29. Contractor shall not be liable for any damage caused by defects in, or the unsuitability of client-supplied fixtures, fittings, materials and/or equipment for the purposes for which they were intended by the Client.
30. The Contractor shall not be liable for any loss or damage resulting from any Act of Parliament, Government order, strike, war, delay in delivery of manufacturing materials or from any other circumstances beyond the Contractor's control.

CLIENT'S OBLIGATIONS

31. The Client shall provide scaffolding and/or access equipment for the Works unless otherwise specified in the contract.

SUPPLY OF MATERIALS

32. Where any fixtures, fittings, materials and/or equipment are supplied by the Client, they will be stored, handled and installed at the risk of the Client, subject to clause 25. The Contractor is not liable for any failure of materials supplied by the Client.
33. All materials removed from the Client's site/premises shall be deemed to be the property of the Contractor unless the Contractor is otherwise notified by the Client.

INSURANCE

34. The Contractor shall procure any insurances that the Contractor is required by any Act of Parliament ("statutory insurance") that imposes an obligation on the Contractor to take insurance cover.
35. The Client shall effect all other insurances that normally relate to risks generated in the work associated with the building work and the plumbing/mechanical services work (but not covered by such statutory insurance) and shall indemnify the Contractor for any liability that falls within the ambit of such risks, unless it is agreed between parties that certain insurances shall be the responsibility of the Contractor in which case they will be listed as variations with the client being responsible for the applicable premiums.

VARIATIONS

36. This contract can only be varied by agreement in writing.

SUSPENSION/TERMINATION OF CONTRACT

37. Where the Client fails to comply with any of these contract conditions, the Contractor may issue a notice of suspension and may suspend the Works until the Client remedies the default.
38. If the Client does not remedy a default within 7 days beyond the date of suspension, the Contractor may terminate the contract by sending a notice of termination to the Client.
39. The Contractor's right to suspend or terminate this contract exists in addition to the Contractor's other rights available at law to seek recompense for work done and material supplied to the date of suspension/termination.

DISPUTE RESOLUTION

40. If the Client is dissatisfied with any aspect of the Works, the Client must provide a notice of complaint to the Contractor setting out the details of and the grounds for the complaint.
41. If the Contractor receives a notice of complaint, the Contractor must send a notice of reply to the Client setting out a method for dealing with the complaint within 7 days of receipt of the notice of complaint.
42. If the Client agrees with the Contractor's proposed method to deal with the complaint, the Client must inform the Contractor of such agreement within 7 days of receipt of the notice of reply and must permit the Contractor to deal with the complaint accordingly.
43. If the Client does not agree with the Contractor's proposed method to deal with the complaint, the Client and the Contractor shall allow a period of up to 21 days (commencing on the day after time has expired for the Client to agree to the notice of reply) for negotiations to take place and the contract shall be suspended but shall not be terminated for that period.
44. If no resolution is reached by the end of 21 days either party may refer the complaint to the Master Plumbers' and Mechanical Services Association of Australia for complaint resolution assistance. Such a request must be made in writing setting out details of and the grounds for the complaint.
45. Any dispute or difference unresolved at this stage shall be referred to an appropriate tribunal or statutory body for mediation or arbitration.
46. Each party shall bear its own costs of presenting its position to the arbitrator(s) unless the arbitrator(s) make another determination in respect of the costs.

SEVERANCE CLAUSE

47. If any words or provisions in this contract are unenforceable, the remainder of this contract shall remain effective.

NOTICE

48. Any notice, request or demand to be given pursuant to this contract shall be given in writing, signed by that party and shall be sent by post to the address of the other party as stated in this contract, and shall be deemed to have been given on the day following that on which it was posted.