

1. Definitions

- 1.1 “*Plumber*” shall mean Fintin Pty Ltd T/A Shailer Park Plumbing its successors and assigns or any person acting on behalf of and with the authority of Fintin Pty Ltd T/A Shailer Park Plumbing.
- 1.2 “*Client*” shall mean the *Client* or any person acting on behalf of and with the written authority of the *Client*.
- 1.3 “*Work*” shall mean all *Works* (including the supply of *Materials*) undertaken by the *Plumber* and described in this contract and includes any advice or recommendations.
- 1.4 “*Materials*” shall means *Materials* required to complete the *Works*.
- 1.5 “*Price*” shall mean the *Price* of the *Works* as agreed between the *Plumber* and the *Client*.

2. Acceptance

- 2.1 Any instructions received by the *Plumber* from the *Client* for the supply of *Works* and/or the *Client*’s acceptance of *Works* undertaken by the *Plumber* shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one *Client* has entered into this agreement, the *Clients* shall be jointly and severally liable for all payments of the *Price*.
- 2.3 Upon acceptance of these terms and conditions by the *Client*, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the *Plumber*.
- 2.4 None of the *Plumber*’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Plumber* in writing nor is the *Plumber* bound by any such unauthorised statements.
- 2.5 The *Client* shall give the *Plumber* 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 *Plumber* as a result of the *Client*’s failure to comply with this clause.

3. Price And Payment

- 3.1 At the *Plumber*’s sole discretion the *Price* shall be either:
 - (a) as indicated on invoices provided by the *Plumber* to the *Client* in respect of *Works* supplied; or
 - (b) the *Plumber*’s quoted *Price* (subject to clause 4) which shall be binding upon the *Plumber* provided that the *Client* shall accept the *Plumber*’s quotation in writing within thirty (30) days.
- 3.2 At the *Plumber*’s sole discretion a deposit may be required.
- 3.3 At the *Plumber*’s sole discretion:
 - (a) payment shall be due on delivery of the *Works*; or
 - (b) payment shall be due before delivery of the *Works*; or
 - (c) payment for approved *Clients* shall be made by instalments in accordance with the *Plumber*’s payment schedule.
- 3.4 Time for payment for the *Works* shall be of the essence and will be stated on the invoice. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 The *Plumber* may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work 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.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the *Client* and the *Plumber*.
- 3.7 The *Price* shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the building contract schedule.

4. Variations

- 4.1 In the event that the *Client* requests a variation, the *Plumber* will give the *Client* a written variation document detailing the *Work*, 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.
- 4.2 In the event that the *Plumber* requests a variation, the *Plumber* will state the reason for the variation in writing and require written acceptance by the *Client* of the variation before commencing *Work* on the variation.
- 4.3 In the event of unforeseeable problems with the site which are only revealed when undertaking the *Works* the *Plumber* may carry out any *Work* needed to fix any such problem if the *Plumber* considers it necessary for satisfactory and safe completion of the *Works*. Any additional *Work* necessary due to an 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 *Plumber*’s actual cost plus twenty (20%) percent for the *Works*.

5. Delivery Of Works

- 5.1 Subject to clause 5.2 it is the *Plumber*’s responsibility to ensure that the *Works* start as soon as it is reasonably possible.
- 5.2 The *Works* commencement date will be put back and the building period extended by whatever time is reasonable in the event that the *Plumber* claims an extension of time (by giving the *Client* written notice) where completion is delayed by an event beyond the *Plumber*’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 *Plumber* that the site is ready.

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- 5.3 The *Works* shall be deemed to be practically completed when subject to clauses 6.1 & 6.2 the *Works* carried out under this contract have been completed without any omissions or defects in accordance with the plans and specifications set out in this contract.
- 5.4 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.
- 5.5 The *Plumber* may deliver the *Works* by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.6 The failure of the *Plumber* to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The *Plumber* shall not be liable for any loss or damage whatever due to failure by the *Plumber* to deliver the *Works* (or any of them) promptly or at all.

6. Omissions or Defects

- 6.1 The *Client* shall inspect the *Works* on delivery and shall within seven (7) days of delivery (time being of the essence) notify the *Plumber* of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The *Client* shall afford the *Plumber* 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 conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective *Works*, which the *Plumber* has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the *Works* or repairing the *Works*, except where the *Client* has acquired *Plumber* as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) 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*, or repair of the *Works*, or replacement of the *Works*.
- 6.2 In addition to clause 5.3 practical completion also takes place when, in the event of a minor omission or defect the *Plumber* gives the *Client* a defects document that:
 - (a) lists the minor defects and minor omissions that both the *Plumber* and *Client* agree exist; and
 - (b) states by when the *Plumber* is to correct the listed defects and omissions; and
 - (c) lists the minor defects and omissions the *Client* claims exist, but that are not agreed by the *Plumber* to exist; and
 - (d) is signed by the *Plumber*.
- 6.3 The *Plumber* shall be entitled to make a claim for any completion payment so long as the *Plumber* has made all reasonable efforts to have the *Client* sign the defects document to acknowledge its contents.

7. Returns

- 7.1 Returns will only be accepted provided that:
 - (a) the Buyer has complied with the provisions of clause 6.1; and
 - (b) the Seller has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date; and
 - (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and the Goods 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.
- 7.2 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.

8. Client's Responsibility

- 8.1 It is the intention of the *Plumber* and agreed by the *Client* that:
 - (a) any building/construction sites will comply with all Queensland occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
 - (b) the *Plumber* is not responsible for the removal of rubbish from or clean up of the building/construction site/s. This is the responsibility of the *Client* or the *Client's* agent.

9. Risk

- 9.1 If the *Plumber* retains Ownership of the *Materials* nonetheless, all risk for the *Materials* passes to the *Client* on completion.

10. Surplus Materials

- 10.1 Unless otherwise stated elsewhere in this contract:
 - (a) only suitable new *Materials* will be used;
 - (b) demolished *Materials* remain the *Client's* property; and
 - (c) *Materials* which the *Plumber* brings to the site which are surplus remain the property of the *Plumber*.

11. Title

- 11.1 It is the intention of the *Plumber* 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 *Plumber* in respect of all contracts between the *Plumber* and the *Client*.

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- 11.2 Receipt by the *Plumber* 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 *Plumber's* Ownership or rights in respect of *Materials* shall continue.
- 11.3 It is further agreed that:
- (a) where practicable the *Materials* shall be kept separate and identifiable until the *Plumber* 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 *Plumber* to the *Client* the *Plumber* may give notice in writing to the *Client* to return the *Materials* or any of them to the *Plumber*. Upon such notice the rights of the *Client* to obtain Ownership or any other interest in the *Materials* shall cease; and
 - (c) the *Plumber* 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 *Plumber* then the *Plumber* or the *Plumber'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*.

12. Warranty

- 12.1 Subject to the conditions of warranty set out in clause 12.2 the *Plumber* warrants that if any defect in any workmanship of the *Plumber* becomes apparent and is reported to the *Plumber* within twelve (12) months of the date of delivery (time being of the essence) then the *Plumber* will either (at the *Plumber's* 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 caused by or arise through:
 - (i) failure on the part of the *Client* to properly maintain any Goods; or
 - (ii) failure on the part of the *Client* to follow any instructions or guidelines provided by the *Plumber*; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods 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 *Plumber* shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the *Plumber's* consent.
 - (c) in respect of all claims the *Plumber* shall not be liable to compensate the *Client* for any delay in either replacing or remedying the workmanship or in properly assessing the *Client's* claim.
- 12.3 For Goods not manufactured by the *Plumber*, the warranty shall be the current warranty provided by the manufacturer of the Goods. The *Plumber* 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 Goods.
- 12.4 To the extent required by statute the *Plumber* warrants that:
- (a) the *Works* shall be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract schedule;
 - (b) all *Materials* supplied be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those *Materials* will be new;
 - (c) the *Works* will be carried out in accordance with all relevant laws and legal requirements (including, but not limited to, the Building Act 1975);
 - (d) the *Works* will be carried out in an appropriate and skilful way, with reasonable skill and care;
 - (e) the *Works* will be carried out in accordance with the plans and the specifications to this contract;
 - (f) if the *Works* consists of the construction of a detached dwelling or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the *Works* are finished; and
 - (g) if the contract states the particular purpose for which the *Works* are required, or the result which the *Client* wishes the *Works* to achieve (so as to show that the *Client* relies on the *Plumber's* skill and judgment) then the *Works* and any *Materials* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.
- 12.5 Clause 11.1(b) does not apply if the *Plumber* is subject to the direction of the *Client's* architect for the supply of *Materials*, or the *Client* is responsible for nominating the *Materials* and either:
- (a) there are no reasonable grounds for not using the *Materials*; or
 - (b) there are reasonable grounds for not using the *Materials* and the *Plumber* advises the *Client* as such in writing and the *Client* still insists on the *Materials* being used.
- 12.6 For *Material* not manufactured by the *Plumber* the warranty shall be the current warranty provided by the manufacturer of the *Material*. The *Plumber* shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

13. The Commonwealth Trade Practices Act 1974, Building Act 1975, and Fair Trading Acts

- 13.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974, Building Act 1975, or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

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14. Intellectual Property

- 14.1 Where the *Plumber* has designed, drawn or written plans or a schedule of *Works* for the *Client*, then the copyright in those plans, schedules, designs and drawings shall remain vested in the *Plumber*, and shall only be used by the *Client* at the *Plumber's* discretion.
- 14.2 The *Client* warrants that all designs or instructions to the *Plumber* will not cause the *Plumber* to infringe any patent, registered design or trademark in the execution of the *Client's* order.

15. Default & Consequences of Default

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 15.2 If the *Client* defaults in payment of any invoice when due, the *Client* shall indemnify the *Plumber* from and against all costs and disbursements incurred by the *Plumber* in pursuing the debt including legal costs on a solicitor and own client basis and the *Plumber's* collection agency costs.
- 15.3 Without prejudice to any other remedies the *Plumber* may have, if at any time the *Client* is in breach of any obligation (including those relating to payment) the *Plumber* may suspend or terminate the supply of *Works* to the *Client*. The *Plumber* will not be liable to the *Client* for any loss or damage the *Client* suffers because the *Plumber* exercised its rights under this clause.
- 15.4 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.
- 15.5 Without prejudice to the *Plumber's* other remedies at law the *Plumber* shall be entitled to cancel all or any part of any order of the *Client* which remains unperformed and all amounts owing to the *Plumber* shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the *Plumber* becomes overdue, or in the *Plumber'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*.

16. Cancellation

- 16.1 The *Client* may cancel this contract if the *Client* gives the *Plumber* a signed notice stating that the *Client* is ending the contract under this clause and giving the details of why the contract is being ended.
- 16.2 If a contract is ended under this clause, the *Plumber* is entitled to a reasonable *Price* for the *Work* carried out under the contract to the date the contract is ended.

17. Privacy Act 1988

- 17.1 The *Client* agrees for the *Plumber* to obtain from a credit reporting agency a credit report containing personal credit information about the *Client* in relation to credit provided by the *Plumber*.
- 17.2 The *Client* agrees that the *Plumber* may exchange information about the *Client* 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 the *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 the *Client*.
- 17.3 The *Client* consents to the *Plumber* being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The *Client* agrees that personal credit information provided may be used and retained by the *Plumber* for the following purposes and for other purposes as shall be agreed between the *Client* and *Plumber* or required by law from time to time:
 - (a) provision of *Works*; and/or
 - (b) marketing of *Works* by the *Plumber*, 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*.
- 17.5 The *Plumber* 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*.

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18. Security And Charge

- 18.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Buyer and/or the Guarantor (if any) is the Client of land, realty or any other asset capable of being charged, both the Buyer 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 Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller'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 Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer'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.

19. Building and Construction Industry Payments Act 2004

- 19.1 At the *Plumber's* sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

20. General

- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 20.3 The *Plumber* 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 *Plumber* of these terms and conditions.
- 20.4 In the event of any breach of this contract by the *Plumber* the remedies of the *Client* shall be limited to damages. Under no circumstances shall the liability of the *Plumber* exceed the *Price* of the *Works*.
- 20.5 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 *Plumber*.
- 20.6 The *Plumber* may license or sub-contract all or any part of its rights and obligations without the *Client's* consent.
- 20.7 The *Plumber* 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 *Plumber* notifies the *Client* of such change.
- 20.8 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.
- 20.9 The failure by the *Plumber* to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the *Plumber's* right to subsequently enforce that provision.

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