

BAYWOOD PLUMBING & GAS
Trading Terms and Conditions

1. Interpretation

- 1.1. In these terms and conditions ("Terms"):
- (a) "ACL" means the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth);
 - (b) "Agreement" means the agreement arising between the Supplier and the Customer upon the Customer's acceptance of these Terms;
 - (c) "Customer" means the person buying the Goods and Services as specified in any invoice, document or order;
 - (d) "delivery" and "delivered" includes supply and supplied and vice versa;
 - (e) "Goods" means all goods sold or delivered by the Supplier to the Customer under or in connection with the Agreement;
 - (f) "Non-Excludable Provisions" means any term, condition, warranty, undertaking or guarantee imposed by legislation (including the ACL and PPSA) in relation to the Agreement which cannot be excluded;
 - (g) "Order" means a Customer's purchase order;
 - (h) "PPSA" means the *Personal Property Securities Act 2009* (Cth) and any other legislation in respect of it;
 - (i) "Schedule of Rates" means the prices in effect at the date of delivery (whether notified to the Customer or not);
 - (j) "Services" means the services performed or services to be performed under or in connection with the Agreement; and
 - (k) "Supplier" means Baywood Holdings Pty Ltd (ACN 009 402 957) trading as Baywood Plumbing and Gas.
- 1.2. Where the context requires, a reference to "Goods and Services" will mean and include a reference to "Goods" or "Services" or "Goods and Services".
- 1.3. Singular includes plural and vice versa and any gender includes every gender.
- 1.4. A reference to a person includes a body corporate.
- 1.5. Nothing in these Terms is to be read or applied so as to exclude, restrict or modify any term, condition, warranty, guarantee, right or remedy implied by law (including the ACL and the PPSA) and which by law cannot be excluded, restricted or modified.

2. Acceptance

- 2.1. The Customer shall be deemed to have accepted these Terms if the Customer places an order for or accepts delivery of Goods and Services.
- 2.2. Any contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms, shall not apply nor shall they constitute a counter-offer.

3. Quotation, pricing and payment

- 3.1. Prices charged for Goods and Services will be according to a current quotation for those Goods and Services. Otherwise they will be determined by the Supplier by reference to its Schedule of Rates regardless of any Order.
- 3.2. Any quotation by the Supplier shall not constitute an offer. Quotations will remain valid for the period stated in the quotation or otherwise for thirty (30) days from the date of the quotation.
- 3.3. Unless otherwise specified by the Supplier, the prices exclude:
- (a) GST and the Customer must pay to the Supplier any GST payable upon the delivery of Goods and Services in the same manner and at the same time as payment for the Goods and Services; and
 - (b) costs and charges in relation to insurance, packing (other than the standard packing of the Supplier), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
- 3.4. The Supplier may refuse to supply any Order in its absolute discretion.
- 3.5. At the Supplier's sole discretion, a non-refundable deposit may be required.

- 3.6. The Supplier, acting reasonably, has the right to change the price:
- (a) if the Customer requests or directs a variation to the Goods and Services;
 - (b) where additional Goods and Services are required due to the discovery of hidden or unidentifiable difficulties (including, without limitation, arising from areas affected by obstructions or where access is limited or unsafe or where prerequisite work by a third party is not completed);
 - (c) where the price has been based on information provided by the Customer and that information proves to provide an inaccurate or misleading description or representation of the Goods and Services required; or
 - (d) in the event of increases to the Supplier's costs to supply the Goods and Services which are beyond the Supplier's control.
- 3.7. Where the Supplier supplies Goods and Services on credit, payment for the Goods and Services is due within seven (7) days from the date of invoice unless otherwise stated in writing by the Supplier.
- 3.8. Where the Supplier supplies Goods and Services other than on credit, payment for the Goods and Services is strictly cash on delivery unless otherwise stated in writing by the Supplier.
- 3.9. Amounts payable by the Customer under the Agreement must be paid without deduction, retention or set-off of any kind or for any reason.

4. Delivery

- 4.1. Any times quoted or provided by the Supplier for delivery of Goods and Services are estimates only and while the Supplier will endeavour to meet those estimates, the Supplier shall not be liable for delay in delivery of the Goods and Services. The Customer shall not be relieved of any obligation to pay for Goods and Services by reason of any delay.
- 4.2. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

5. Cancellation

- 5.1. The Supplier may cancel the delivery of any Goods and Services at any time before the Goods and Services are delivered by giving written notice to the Customer. On giving such notice, the Supplier shall repay to the Customer any sums paid (including any deposit) in respect of the price for those Goods and Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 5.2. In the event that the Customer cancels the delivery of Goods and Services, the Customer shall forfeit any deposit to the Supplier and be liable for any and all loss incurred by the Supplier (including, but not limited to, any loss of profits) as a result of the cancellation.

6. Property and risk

- 6.1. Until full payment has been made for all Goods, and any other sums in any way outstanding by the Customer to the Supplier from time to time:
- (a) The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for the Supplier, returning the Goods to the Supplier on request. The Goods shall nevertheless be at the risk of the Customer from time of delivery.
 - (b) The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of the Supplier provided that there shall be no right to bind the Supplier to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for the Supplier pursuant to the fiduciary relationship.

- (c) The Supplier is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.
- 6.2. If the Customer requests that the Supplier leave Goods outside the Supplier's premises for collection or to deliver Goods to an unattended location then such Goods shall always be left at the sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately. In the event that such Goods are lost, damaged or destroyed, replacement of the Goods shall be at the Customer's expense.
- 6.3. The Customer acknowledges that the Supplier is not in the business of supplying advisory services and that any advice, recommendation or information given by the Supplier is done so gratuitously.
- 7. Defects, warranties and returns**
- 7.1. The Customer must inspect the Goods and Services on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity or failure to comply with the description or quote. The Customer must notify the Supplier of any other alleged defect in the Goods and Services as soon as reasonably possible after that defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect the Goods and Services.
- 7.2. Except as expressly set out in these Terms and in Non-Excludable Provisions (which includes the statutory guarantees implied by the ACL), the Supplier makes no warranties or other representations in conjunction with the delivery of the Goods and Services. The Supplier's liability in respect of such warranties is limited to the fullest extent permitted by law.
- 7.3. If the Customer is not a consumer within the meaning of the ACL, the Supplier's liability for any defect or damage in the Goods and Services is:
- limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
 - limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods; or
 - otherwise negated absolutely.
- 7.4. Subject to this clause 7 and the ACL, the Supplier is not obliged to accept a return unless:
- the Customer has complied with clause 7.1;
 - the Supplier, acting reasonably, agrees that the Goods are defective;
 - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 7.5. Notwithstanding this clause 7 but subject to the ACL, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain or store the Goods;
 - the Customer using the Goods for any purpose other than that which they were designed;
 - the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - the Customer failing to follow any instructions or guidelines provided by the Supplier; or
 - fair wear and tear, any accident not caused by the Supplier or any act of God.
- 7.6. Notwithstanding anything contained in this clause 7, if the Supplier is required by the ACL to accept a return, the Supplier will only accept the return on the conditions imposed by the ACL.
- 7.7. If the Supplier is required to replace the Goods under this clause 7 or the ACL, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.
- 8. Accuracy of Customer's plans and measurements**
- 8.1. The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from the inaccurate plans, specifications or other information.
- 9. Access**
- 9.1. The Customer shall ensure that the Supplier has clear and free access to the site at all times to enable it to undertake the Services. The Supplier 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 Supplier.
- 10. Underground services**
- 10.1. Prior to the Supplier performing any Services, the Customer must advise the Supplier of the precise location of all underground services on the site and clearly mark the same.
- 10.2. Whilst the Supplier will take all care to avoid damage to any underground services, the Customer agrees to indemnify the Supplier in respect of all and any liability, claims, loss, damage, costs and fines as a result of damage to underground services not precisely located and marked in accordance with clause 10.1 .
- 11. Gas works**
- 11.1. With respect to gas works, it is the Customer's responsibility to have the site's gas services tested and any leaks repaired prior to the Supplier commencing works.
- 12. Limitation of liability**
- 12.1. Subject to the Non-Excludable Provisions, and to the maximum extent permitted by law:
- the Supplier's maximum aggregate liability for all claims under or relating to the Agreement or its subject matter, whether in contract, tort (including, without limitation, negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the amount paid by the Customer to the Supplier under this Agreement; and
 - the Supplier shall not be liable under any circumstances to the Customer for any consequential, indirect or special loss or damage (including, without limitation, loss of profits) suffered by the Customer or a third party howsoever caused.
- 13. PPSA**
- 13.1. In this clause 13, financing statement, financing change statement, security agreement and security interest has the meaning given to it by the PPSA.
- 13.2. The Customer agrees that the Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for the Goods – that have previously been delivered and that will be delivered in the future by the Supplier to the Customer.
- 13.3. As and when required by the Supplier, the Customer will, at its own expense, provide all reasonable assistance and relevant information to enable the Supplier to register a financing statement or a financing change statement and generally to obtain, maintain, register and enforce the Supplier's security interest.
- 13.4. The Customer waives its right to receive any notice under the PPSA unless the notice is required and that requirement cannot be excluded.
- 13.5. Sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA are excluded to the fullest extent permitted.
- 14. Default**
- 14.1. If the Customer fails to pay the Supplier any money payable by it under the Agreement:
- the Supplier may charge and recover interest on the overdue amounts at the rate of 15% per annum calculated

from the due date with such interest accruing day to day; and

- (b) the Customer must indemnify the Supplier against and reimburse the Supplier for all costs, stamp duty, debt collection agency costs and commissions, legal expenses on a solicitor-client basis and other fees, expenses and costs incurred by the Supplier arising from or in connection with the Customer's default, including the lawful exercise or attempted lawful exercise of any power, right or remedy.
- 14.2. The Supplier may apply any payment tendered or money recovered in the following order:
- (a) firstly, as reimbursement of any amounts payable pursuant to clause 14.1(b);
 - (b) secondly, in payment of any interest payable pursuant to clause 14.1(a); and
 - (c) thirdly, in payment of the longest overdue amount.
- 14.3. Without prejudice to any other remedies the Supplier may have, if any time the Customer is in breach on any obligation (including those relating to payment) under the Agreement, the Supplier may suspend or cancel the supply of Goods and Services to the Customer and the Supplier shall not be liable to the Customer for any loss or damage the Customer suffers as a result.
- 14.4. If the Customer fails to pay the Supplier any money payable by it under the Agreement or becomes bankrupt, compounds with its creditors or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, then the Supplier is irrevocably authorised to enter any premises where unpaid Goods are being kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the unpaid Goods without liability for trespass or any resulting damage.

15. Security and charge

- 15.1. In consideration of the Supplier agreeing to supply the Goods and Services, the Customer charges all of the Customer's rights, title and interest in any land held now and in the future to secure the performance by the Customer of its obligations under the Agreement.

16. Intellectual property

- 16.1. Where the Supplier has designed, drawn, written plans or a schedule of works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier.
- 16.2. The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the carrying out of the customer's order or instructions and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

17. Privacy Policy

- 17.1. The Supplier is committed to the protection of the Customer's privacy and will comply with the Australian Privacy Principles in all dealings with the Customer.
- 17.2. This statement has been prepared in accordance with the National Privacy Principles as outlined in the *Privacy Act 1988* (Cth).
- 17.3. By ordering Goods and Services, the Customer is deemed to accept the terms of this Privacy Policy, including consent to the collection and use of personal information about the Customer.
- 17.4. In the Customer providing personal information about the Customer (and, if applicable, its directors), the Customer consents to the Supplier using such personal information ("Personal Information") for purposes:
- (a) concerned with the granting or continuation of credit;
 - (b) concerned with responding to Customer queries;
 - (c) of compiling the Supplier's customer database; and

(d) concerned with marketing and maintaining a client relationship with the Customer.

- 17.5. The Supplier will not sell, trade or disclose any part of the Personal Information to any third party without first obtaining signed written consent, except where provided by this Privacy Policy or where it is obliged to do so by law.
- 17.6. The Customer will be entitled to access the Personal Information the Supplier holds about the Customer.

18. General

- 18.1. Customer warrants that it has the power to enter into the Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that the Agreement creates binding and valid legal obligations upon it.
- 18.2. The Agreement binds the Customer both personally and as trustee of any trusts for which it is trustee.
- 18.3. The Agreement is enforceable against the Customer (if more than one person) jointly and severally.
- 18.4. The Supplier does not waive any breach by the Customer of the Agreement unless the waiver is in writing signed by the Supplier. No waiver is to be construed as a general waiver unless it is expressly stated to be a general waiver.
- 18.5. If any provision of the Agreement does not comply with any law, then the provision must be read down so to give it as much effect as possible, and if it is not possible to give the provision any effect at all, then it must be treated as severable from the rest of the Agreement.
- 18.6. The Supplier may licence or sub-contract all or any part of its rights and obligations under the Agreement without the Customer's consent.
- 18.7. The Agreement is to be governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia in connection with the Agreement.