

Terms and Conditions

By instructing Plumber to supply the Goods or Services, Client acknowledges that it has read and agrees to be bound by the terms of this agreement.

1. Definitions

Plumber means Rozelle Plumbing PTY LTD trading as Rozelle Plumbing and The Heater Man and its successor and assigns.

Client means the client as per the front of the invoice or their authorised representative.

Goods means goods supplied by Plumber to Client under this agreement.

Intellectual Property Rights means any and all intellectual and commercial property rights throughout the world including, without limitation, copyright, trademarks whether registered or unregistered, designs, patents, confidential information, know-how and trade secrets, whether or not now existing and whether or not registered or registrable and includes applications for and any right to apply for registration of such rights and includes all renewals and extensions

Order means an order placed by Client with Plumber for the supply of Goods and/or Services whether or not Plumber has issued a quotation for the supply of the Goods and/or Services.

PPSA means the *Personal Properties Securities Act 2011* (Cth).

Price means the price of Goods and Services set out in Plumber's tax invoice and includes the Goods and Services Tax (GST), postage, handling, freight and other charges affecting the cost of the Goods or Services.

Services means goods supplied by Plumber to Client under this agreement.

2. Quotation and orders

2.1 Unless previously withdrawn, a quotation issued by Plumber is open for acceptance for 30 days. Plumber reserves the right to refuse any Order placed by Client within 7 days of the Order being placed.

2.2 Any quotation is based on Plumber's professional estimation of where existing drainage, sewer pipes, water or gas lines and electrical cables have been laid. If this is not the case or if they are inaccessible or unusable in their present state, Plumber reserves the right to vary the quotation.

2.3 Once an Order has been accepted by Plumber, Client cannot cancel it without the express consent of Plumber. Where Plumber has already ordered goods from a third party, cancellation will only be possible if Plumber can return the goods to the third party at no loss to Plumber, 30% restocking fee to apply.

2.4 Plumber may, at any time after acceptance of an Order, cancel the supply of Goods or Services or any part of them and Plumber will not be liable for any loss or damage suffered by Client as the result of such cancellation.

2.5 If there is any change, variation in the Goods or Services the subject of the Order or any extra work carried out by Plumber, these will be charged by Plumber at Plumber's standard rate from time to time and will be shown as variations in Plumber's tax invoice.

3. Price and Payment

3.1 The Price is payable in full without any deduction when the Goods or Services are supplied unless otherwise agreed in writing by Plumber. Time for payment of the Price is of the essence.

3.2 If the supply of Goods or Services is by credit, Client must have submitted a credit application which is approved in writing by Plumber. In that case, payment must be made in accordance with the terms of the credit application.

3.3 Client may be charged interest on any overdue amounts at the rate of 3% per annum above the then current cash rate target of the Reserve Bank of Australia, calculated daily from the day the payment became due until the day of full and final payment.

3.4 Client agrees to pay Plumber any expenses (including legal costs) incurred in collecting any outstanding debts due by client to Plumber.

3.5 Payment must be made by one of Plumber's accepted payment methods at the time payment of the Price is due. If payment is not by cash, then

7.2 To the extent permitted by law, all terms, guarantees, warranties, representations or conditions which are not expressly stated in this agreement are excluded. If Plumber is liable for a breach of an imposed term, guarantee, warranty, representation or condition or warranty, Plumber's liability is, at Plumber's option, limited to:

- (a) the replacement of the Goods or the supply of equivalent goods or the supply of the Services again;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
- (d) the payment of the cost of having the Goods repaired or having the Services supplied again.

7.3 To the extent permitted by law Plumber will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity and loss of data arising out of or in connection with the Goods or Services, including as a result of the late or non-supply of Goods, whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

8. Indemnity

8.1 Client indemnifies and keeps indemnified Plumber and its directors, agents and employees against all actions, claims, losses, liabilities, costs or expenses (including reasonable legal costs or expenses) which may be brought against or suffered or incurred by any of them, arising directly or indirectly out of or in relation to damage to the premises, the work site or any property of Plumber left at the Client's premises or in respect of injury to any person at Client's premises or as the result of a breach of this agreement by Client.

9. Intellectual Property Rights

9.1 Plumber owns or is the exclusive licensee of all Intellectual Property Rights in any drawings, specifications, diagrams or other materials created by Plumber for the purposes of supplying the Goods or Services.

9.2 Client warrants that any drawings, specifications, diagrams or other materials it supplies to Plumber will not infringe the Intellectual Property Rights of any third party.

10. Site issues

10.1 **Blocked drains:** Client acknowledges that the presence of plant root growth and blockages generally is an indication of damaged pipes that cannot be properly fixed by simply removing the root growth or blockage. If Client does not instruct Plumber to carry out the work to repair or replace damaged pipes or drains, then Plumber gives no warranty that the same or similar problems will not recur. If any of Plumber's equipment becomes lodged or is damaged while in Client's pipes or drains, Client agrees to pay the costs of removal of the equipment including any necessary excavation and restoration work.

10.2 **Rock and filled ground:** unless otherwise agreed the supply of Services does not include the excavation, relocation, repair or removal of any rocks, surfaces or other obstructions which are necessary in order for Plumber to supply the Goods or Services.

10.3 **Restoration:** Plumber will take care when supplying the Goods or Services to minimise any disturbance or damage to surrounding areas including walls, ceilings, floors, garden beds and paint. Any repair or restoration required after the supply of the Goods or Services is not included in Plumber's quotation and must be carried out at Client's cost.

11. Description of work

11.1 Plumber's quotation is based on a visual inspection of Client's premises but the actual extent or nature of the Goods or Services to be supplied may not become apparent until work commences. Plumber reserves the right to vary the quotation once the supply of Goods or Services is commenced.

11.2 If Plumber considers it must vary the quotation, Plumber will immediately notify Client of the additional Goods or Services to be supplied and the estimated new Price. Client must notify Plumber within 7 days if it does not want Plumber to provide the Goods and

payment will not be deemed to have occurred until the full Price has been cleared and is available for Plumber's use.

4. Supply of Goods and Services

- 4.1 Goods and Services will be supplied to Client's address on the quotation unless otherwise notified to Plumber by Client.
- 4.2 Client must ensure that there is clear and adequate access to the area where the Goods are to be delivered and the Services supplied. Plumber will not be liable for any loss or damage suffered by Client or its property as a result of inadequate access.
- 4.3 Plumber may deliver Goods or Services in instalments. If separate invoices are raised for each instalment Client must pay the invoice in accordance with the terms of this agreement and is not entitled to wait until all instalments of the Goods or Services have been supplied.
- 4.4 Plumber will use its best endeavours to supply Goods or Services in accordance with the quotation but will not be liable to Client for any delay in the supply of the Goods or Services no matter what reason, including negligence by Plumber.
- 4.5 Postponement of supply of Goods or Services by Client may incur an additional fee which will form part of the Price.

5. Title and risk

- 5.1 The risk of loss or damage to the Goods passes to Client when the Goods are delivered to the Client's address on the quotation or any other address notified to Plumber by Client.
- 5.2 Notwithstanding delivery of the Goods to Client, title in the Goods will not pass to Client until Client's payment has been processed or otherwise received by Plumber. If Client's payment is declined for any reason Plumber reserves the right to reclaim the Goods from Client's possession, custody or control even if they have been delivered to Client or moved from the delivery address. Plumber reserves the right to keep or sell the Goods.
- 5.3 This clause 5 creates a purchase money security interest for the purposes of the PPSA. To the extent permitted under the PPSA, Client agrees to contract out of the provisions listed in section 115 of the PPSA which impose a burden on Plumber. Client waives its right to be provided with verification statements under section 157 of the PPSA. Client and Plumber agree that neither will disclose to any third person information referred to in section 275(1) of the PPSA and that this is a confidentiality agreement for the purposes of section 275(6) of the PPSA.

6. Damaged or defective Goods

- 6.1 Client must inspect the Goods within 48 hours of delivery and if any Goods are damaged or defective Client must immediately notify Plumber in writing giving details of the defect or damage and Client will comply with all reasonable directions of Plumber in dealing with the Goods.
- 6.2 Nothing in this clause 6 is intended to effect or limit any guarantees which by law are implied into the agreement.
- 6.3 Plumber is not liable for any damage arising once the Goods have been delivered to Client or arising out of Client's handling, storing or other negligent act in relation to the Goods.

7. Warranty and Limitation of Liability

- 7.1 In relation to and Goods which are the subject of a manufacturer's warranty, Client agrees to comply with the terms of the manufacturer's warranty in the in the event there is a defect in the Goods.

Services in accordance with the revised quotation but Client will remain liable to pay Plumber for all Goods and Services supplied up to that date.

12. Termination

12.1 Either party may terminate this agreement immediately by notice to the other party:

- (a) if the other party breaches a material term of this agreement capable of being remedied and fails to remedy the breach within 10 business days after being given notice of breach;
- (b) if that other party breaches a material term of this agreement which is not capable of remedy; or
- (c) the other party is unable to pay its debts as they fall due; makes or commences negotiations with a view to making a general rescheduling of its indebtedness, scheme of arrangement or composition with its creditors; or takes any corporate steps for its winding up or the appointment of a receiver, administrator or official manager over any of its revenue and assets.

12.2 If Client terminates this agreement for any reason whatsoever Client must immediately pay Plumber for all Goods or Services already ordered from or supplied by Plumber and Client is responsible for ensuring that its premises are secured and safe pending completion of the work by a third party.

13. Insurance

13.1 Plumber will take out and maintain all insurance it considers appropriate in respect of the supply of Goods and Services and all other insurances required by law including home warranty insurance.

14. General provisions

14.1 A notice given under this agreement must be in writing and sent to the recipient at the address specified in at the beginning of this agreement or such other address as notified from time to time.

14.2 If the performance of this agreement or any obligation under it is prevented, restricted or interfered with by reason of an act of God, fire, lightning, flood or other natural disaster, subsidence, power or gas shortage, inability or delay in obtaining any local government approvals, consents or permits or because of any industrial dispute of any kind or any other cause, whether similar or not to the foregoing, outside of the affected party's control, the affected party, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention, restriction or interference.

14.3 This agreement contains the entire agreement between the parties and can only be amended, supplemented, or waived in writing signed by both parties. The failure of either party to enforce, or the delayed by either party in enforcing, any of its rights shall not be deemed a continuing waiver or modification of this agreement.

14.4 This agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.

14.5 If any clause or part of the clause is illegal, unenforceable or in valid, that cause or part is to be treated as removed from this agreement but the rest of the agreement is not affected.

14.6 Plumber may license or sub contract all or any of its obligations all rights without Client's consent.