

1. DEFINITIONS

- 1.1 "AJ Withrington Plumbers Limited" shall mean AJ Withrington Plumbers Limited, or any agents or employees thereof.
For the sole purpose only of the following details within AJ Withrington Plumbers Limited "Terms and Conditions of Trade" AJ Withrington Plumbers Limited shall be abbreviated to "AJWPL".
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from AJWPL.
- 1.3 "Products" shall mean:
- 1.3.1 all Products of the general description specified on the front of this agreement and supplied by AJWPL to the Customer; and
 - 1.3.2 all Products supplied by AJWPL to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by AJWPL; and
 - 1.3.4 all Products supplied by AJWPL and further identified in any invoice issued by AJWPL to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Products that are marked as having been supplied by AJWPL or that are stored by the Customer in a manner that enables them to be identified as having been supplied by AJWPL; and
 - 1.3.6 all of the Customer's present and after-acquired Products that AJWPL has performed work on or to or in which goods or materials supplied or financed by AJWPL have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" shall mean all products, services, goods and advice provided by AJWPL to the Customer and shall include without limitation all plumbing services and the supply of associated products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by AJWPL to the Customer.
- 1.5 "Price" shall mean the cost of the Products and Services as agreed between AJWPL and the Customer and includes all disbursements e.g. charges AJWPL pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions (including both written and oral) received by AJWPL from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises AJWPL to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by AJWPL to any other party.
- 3.2 The Customer authorises AJWPL to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by AJWPL at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of AJWPL between the date of the contract and delivery of The Products and Services.

5. PAYMENT

- 5.1 Payment for products and services shall be made in full on or before 7 days from the date of invoice. Where special arrangement has been made (in writing only) the payment shall be made in full on or before the 20th of the following month.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by AJWPL in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 All overdue accounts will incur all costs of collection.

6. QUOTATION

- 6.1 Where a quotation is given by AJWPL for Products and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 AJWPL reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

7. AGENCY

- 7.1 The Customer authorises AJWPL to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 7.2 Where AJWPL enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Products and Services supplied by AJWPL passes to the Customer only when the Customer has made payment in full for all Products and Services provided by AJWPL and of all other sums due to AJWPL by the Customer on any account whatsoever. Until all sums due to AJWPL by the Customer have been paid in full, AJWPL has a security interest in all Products and Services.
- 8.2 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with AJWPL until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be deemed to be assigned to AJWPL as security for the full satisfaction by the Customer of the full amount owing between AJWPL and Customer.

- 8.3 The Customer gives irrevocable authority to AJWPL to enter any premises occupied by The Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if AJWPL believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. AJWPL shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. AJWPL may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as AJWPL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Products and Services are retained by AJWPL pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ('PPSA') and to object under s.121 of the PPSA
- 8.5 The following shall constitute defaults by the Customer:
- 8.5.1 Non payment of any sum by the due date.
 - 8.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 8.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Service.
 - 8.5.4 Any Products and Services In the possession of the Customer are materially damaged while any sum due from the Customer to AJWPL remains unpaid.
 - 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 8.5.7 Any material adverse change in the financial position of the Customer.
- 8.6 If the Credit Repossession Act applies to any transaction between the Customer and AJWPL, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

9. SECURITY INTEREST FOR SERVICE PROVIDERS

- 9.1 The Customer gives AJWPL a security interest in all of the Customer's present and after-acquired property that AJWPL has performed services on or to or in which goods or materials supplied or financed by AJWPL have been attached or incorporated.

10 GENERAL LIEN

- 10.1 The Customer agrees that AJWPL may exercise a general lien against any Products and Services or property belonging to the Customer that is in the possession of AJWPL for all sums outstanding under this contract and any other contract to which the Customer and AJWPL are parties.
- 10.2 If the lien is not satisfied within seven (7) days of the due date AJWPL may, having given notice of the lien at its option either
- 10.2.1 Remove such Products and Services and store them in such a place and in such a manner as AJWPL shall think fit and proper and at the risk and expense of the Customer or
 - 10.2.2 Sell such Products and Services, or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

11 DISPUTES

- 11.1 No claim relating to Products and Services will be considered unless made within seven (7) days of delivery.

12 LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon AJWPL which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on AJWPL, AJWPL's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 AJWPL shall not be liable for
 - 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products and Services by AJWPL to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by AJWPL to The Customer; and
 - 12.2.2 The Customer shall indemnify AJWPL against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of AJWPL or otherwise, brought by any person in connection with any matter, act, omission, or error by AJWPL its agents or employees in connection with the Products and Services.
- 12.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade, AJWPL is deemed to be liable to the Customer, following and arising from the supply of Services by it to the Customer, then it is agreed between AJWPL and the Customer that such liability is limited in its aggregate to \$500.00.

13 WARRANTY

- 13.1 Manufacturer's warranty applies where applicable.

14 CONSUMER GUARANTEES ACT

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where The Customer acquires Products and Services from AJWPL for the purposes of a business in terms of section 2 and 43 of that Act.

15 PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 15.1 If the Customer is a company or trust, the director(s) or trustee(s) accepting (including clause 2.1 herein) this contract, in consideration for AJWPL agreeing to supply Products and Services and grant credit to the Customer at their request, also accepting (including clause 2.1 herein) this contract in their personal capacity and jointly and severally personally undertake as principal debtors to AJWPL the payment of any and all monies now or hereafter owed by the Customer to AJWPL and indemnify AJWPL against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

16 MISCELLANEOUS

- 16.1 AJWPL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.2 Failure by AJWPL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations AJWPL has under this contract.
- 16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.4 The Construction Contracts Act 2002 applies where applicable.