

Professional Plumbing Pty Ltd – Terms & Conditions - Residential Works

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Professional Plumbing" means Professional Plumbing Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Professional Plumbing Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Professional Plumbing to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods (including consultation, maintenance and/or installation services) or Services supplied by Professional Plumbing to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.5 "Intended Use" means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with a building.
- 1.6 "Non-Conforming Product" means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
- (b) does not, or will not, comply with the relevant regulatory provisions; or
- (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Professional Plumbing and the Customer in accordance with clause 4 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Professional Plumbing and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Professional Plumbing reserves the right to refuse delivery.
- 2.6 These terms and conditions may be meant to be read in conjunction with Professional Plumbing's Service Agreement, and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.7 Where Professional Plumbing gives any advice, recommendation, information, assistance or service provided by Professional Plumbing in relation to Goods or Services supplied is given in good faith to the Customer or the Customer's agent and is based on Professional Plumbing's own knowledge and experience and shall be accepted without liability on the part of Professional Plumbing. Where such advice or recommendations are not acted upon then Professional Plumbing shall require the Customer or their agent to authorise commencement of the Services in writing. Professional Plumbing shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.8 In the event that Professional Plumbing is required to provide the Services urgently, that may require Professional Plumbing's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Professional Plumbing reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between Professional Plumbing and the Customer.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 7 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that Professional Plumbing shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Professional Plumbing in the formation and/or administration of this Contract; and/or
- (b) contained in any literature (hard copy and/or electronic) supplied by Professional Plumbing in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Professional Plumbing; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Price and Payment**
- 4.1 At Professional Plumbing's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Professional Plumbing to the Customer; or
- (b) Professional Plumbing's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Professional Plumbing reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans, scope of works or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to site access, ready availability of materials, prerequisite work by a third party not being completed, health hazards and/or safety considerations (such as asbestos or other foreign materials), obscured site defects (such as rot or structural integrity) which require remedial work, etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to Professional Plumbing in the cost of labour or materials which are beyond Professional Plumbing's control.
- 4.3 Variations will be charged for on the basis of Professional Plumbing's quotation, and will be detailed in writing, and shown as variations on Professional Plumbing's invoice. The Customer shall be required to respond to any variation submitted by Professional Plumbing within ten (10) working days. Failure to do so will entitle Professional Plumbing to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion. At Professional Plumbing's sole discretion, a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Professional Plumbing, which may be:
- (a) on or before delivery of the Goods; or
- (b) on completion of the Services; or
- (c) by way of instalments/progress payments in accordance with Professional Plumbing's payment schedule;
- (d) the date which shall be fourteen (14) days following the date of any invoice given to the Customer by Professional Plumbing; or
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Professional Plumbing.
- 4.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Professional Plumbing.
- 4.6 Professional Plumbing may in its discretion allocate any payment received from the Customer towards any invoice that Professional Plumbing determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Professional Plumbing may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Professional Plumbing, payment will be deemed to be allocated in such manner as preserves the maximum value of Professional Plumbing's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 4.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Professional Plumbing nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Professional Plumbing an amount equal to any GST Professional Plumbing must pay for any supply by Professional Plumbing under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other 7.1 amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
5. **Provision of the Services**
- 5.1 Subject to clause 5.2 it is Professional Plumbing's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Professional Plumbing claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Professional Plumbing's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
- (b) have the site ready for the Services; or
- (c) notify Professional Plumbing that the site is ready.
- 5.3 Delivery ("Delivery") of the Goods is taken to occur at the time that Professional Plumbing (or Professional Plumbing's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.4 At Professional Plumbing's sole discretion, the cost of Delivery 9.1 is either included in the Price or is in addition to the Price.
- 5.5 Professional Plumbing may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 Any time specified by Professional Plumbing for Delivery of the Goods is an estimate only and Professional Plumbing will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be 9.4 delivered at the time and place as was arranged between both parties. In the event that Professional Plumbing is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Professional Plumbing shall be entitled to charge a reasonable fee for redelivery and/or storage.
6. **Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Professional Plumbing is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Professional Plumbing is sufficient evidence of Professional Plumbing's rights to receive the insurance proceeds without the need for any person dealing with Professional Plumbing to make further enquiries.
- 6.3 If the Customer requests Professional Plumbing to leave Goods outside Professional Plumbing's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos/hazardous or foreign materials, defective or unsafe plumbing or latent or unfavourable soil conditions such as liquefaction residue or risk) that Professional Plumbing, or Professional Plumbing's employees, reasonably form the opinion that the Customer's premises is not safe for the Services to proceed then Professional Plumbing shall be entitled to delay the provision of the Services (in accordance with the provisions of clause 5.2 above) until Professional Plumbing is satisfied that it is safe for the installation to proceed.
- 6.5 Professional Plumbing 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, Professional Plumbing accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. The Customer warrants that any existing plumbing, gas fitting and/or associated services in or upon the site that is subject to the Goods and/or Services is in compliance with regulations. Professional Plumbing reserves the right to halt all Services (in accordance with the provisions of clause 5.2 above) if in their opinion the site is unsafe and/or the current positioning of the site is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed Professional Plumbing will charge a standard fee for the time spent on site based on Professional Plumbing's quotation. The Customer acknowledges that:
- (a) Professional Plumbing is only responsible for components that are replaced by Professional Plumbing and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and
- (b) where Professional Plumbing is requested to use drain/pipe unblocking equipment due to the presence of plant or tree root growth and/or other blockages, and Professional Plumbing does not recommend the use of such equipment, due to the risk of the equipment becoming lodged or stuck, as the blockages may indicate damaged pipe work, Professional Plumbing will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work; and
- (c) Professional Plumbing may require the Customer or their agent to authorise commencement of the Services in writing, if the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment; and
- (d) Professional Plumbing can offer no guarantee that against recurrence or further damage as per clause 6.7(c) or that the high-pressure hose, electric eel, plunger or equipment used will unblock the pipes and/or drain.
- 6.8 The Customer acknowledges and agrees that where Professional Plumbing has performed temporary repairs that:
- (a) Professional Plumbing offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
- (b) Professional Plumbing will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
7. **Access**
- 7.1 The Customer shall ensure that Professional Plumbing has clear and free access to the site at all times to enable them to undertake the Services. Professional Plumbing 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 Professional Plumbing.
8. **Underground Locations**
- 8.1 Prior to Professional Plumbing commencing any work the Customer must advise Professional Plumbing of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst Professional Plumbing will take all care to avoid damage to any underground services the Customer agrees to indemnify Professional Plumbing in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.
9. **Compliance with Laws**
- 9.1 The Customer and Professional Plumbing shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 9.3 The Customer agrees that the site will comply with any Workplace Health and Safety (WHS) laws relating to the site and any other relevant safety standards or legislation.
- 9.4 Where the Customer has supplied products for Professional Plumbing to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those products. However, if in Professional Plumbing's opinion, it is believed that the products supplied will not conform to regulations, then Professional Plumbing shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 4.2.
10. **Title**
- 10.1 Professional Plumbing and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Professional Plumbing all amounts owing to Professional Plumbing; and
- (b) the Customer has met all of its other obligations to Professional Plumbing.
- 10.2 Receipt by Professional Plumbing 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. It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Professional Plumbing on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Professional Plumbing and must pay to Professional Plumbing the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Professional Plumbing and must pay or deliver the proceeds to Professional Plumbing on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Professional Plumbing and must sell, dispose of or return the resulting product to Professional Plumbing as it so directs;
- (e) the Customer irrevocably authorises Professional Plumbing to enter any premises where Professional Plumbing believes the Goods are kept and recover possession of the Goods;
- (f) Professional Plumbing may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Professional Plumbing;
- (h) Professional Plumbing may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
11. **Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute 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 Professional Plumbing for Services – that have previously been supplied and that will be supplied in the future by Professional Plumbing to the Customer. The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Professional Plumbing may reasonably require;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Professional Plumbing for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Professional Plumbing;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Professional Plumbing;
- (e) immediately advise Professional Plumbing of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 Professional Plumbing and the Customer agree that sections 95, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by Professional Plumbing, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by Professional Plumbing under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
12. **Security and Charge**
- 12.1 In consideration of Professional Plumbing agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies Professional Plumbing from and against all Professional Plumbing's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Professional Plumbing's rights under this clause.
- 12.3 The Customer irrevocably appoints Professional Plumbing and each director of Professional Plumbing as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.
13. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 13.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Professional Plumbing in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Professional Plumbing to inspect the Goods.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees). Professional Plumbing acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Professional Plumbing makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Professional Plumbing's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer is a consumer within the meaning of the CCA, Professional Plumbing's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If Professional Plumbing is required to replace the Goods under this clause or the CCA, but is unable to do so, Professional

Professional Plumbing Pty Ltd – Terms & Conditions - Residential Works

- 13.7 Plumbing may refund any money the Customer has paid for the Goods.
If the Customer is not a consumer within the meaning of the CCA, Professional Plumbing's liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Customer by Professional Plumbing at Professional Plumbing's sole discretion;
(b) limited to any warranty to which Professional Plumbing is entitled, if Professional Plumbing did not manufacture the Goods;
(c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 13.1, and
(b) Professional Plumbing has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, Professional Plumbing shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Customer failing to properly maintain or store any Goods;
(b) the Customer using the Goods for any purpose other than that for which they were designed;
(c) 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;
(d) the Customer failing to follow any instructions or guidelines provided by Professional Plumbing;
(e) fair wear and tear, any accident, or act of God.
- 13.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Professional Plumbing as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Professional Plumbing has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 13.10.
- 13.11 Professional Plumbing may in its absolute discretion accept non-defective Goods for return in which case Professional Plumbing may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 13.12 Notwithstanding anything contained in this clause if Professional Plumbing is required by a law to accept a return then Professional Plumbing will only accept a return on the conditions imposed by that law.
- 13.13 Subject to clause 13.1, customised, or non-stockist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
14. **Intellectual Property**
14.1 The Customer warrants that all designs, specifications or instructions given to Professional Plumbing will not cause Professional Plumbing to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Professional Plumbing against any action taken by a third party against Professional Plumbing in respect of any such infringement.
15. **Default and 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 two and a half percent (2.5%) per calendar month (and at Professional Plumbing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
15.2 If the Customer owes Professional Plumbing any money the Customer shall indemnify Professional Plumbing from and against all costs and disbursements incurred by Professional Plumbing in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, Professional Plumbing's contract default fee, and bank dishonour fees).
15.3 Further to any other rights or remedies Professional Plumbing may have under this Contract, if a Customer has made payment to Professional Plumbing, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Professional Plumbing under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 15.4 Without prejudice to Professional Plumbing's other remedies at law Professional Plumbing shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Professional Plumbing shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Professional Plumbing becomes overdue, or in Professional Plumbing's opinion the Customer will be unable to make a payment when it falls due;
(b) the Customer has exceeded any applicable credit limit provided by Professional Plumbing;
(c) the Customer 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
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
16. **Cancellation**
16.1 Without prejudice to any other remedies Professional Plumbing may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Professional Plumbing may suspend or terminate the supply of Goods to the Customer. Professional Plumbing will not be liable to the Customer for any loss or damage the Customer suffers because Professional Plumbing has exercised its rights under this clause.
16.2 Professional Plumbing may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Professional Plumbing shall repay to the Customer any money paid by the Customer for the Goods. Professional Plumbing shall not be liable for any loss or damage whatsoever arising from such cancellation.
16.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Professional Plumbing as a direct result of the cancellation (including, but not limited to, any loss of profits).
Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
17. **Privacy Policy**
17.1 All emails, documents, images or other recorded information held or used by Professional Plumbing is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. Professional Plumbing acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Professional Plumbing acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Professional Plumbing that may result in serious harm to the Customer, Professional Plumbing will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
17.2 Notwithstanding clause 17.1, privacy limitations will extend to Professional Plumbing in respect of Cookies where transactions for purchases/orders transpire directly from Professional Plumbing's website. Professional Plumbing agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
(a) IP address, browser, email Customer type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to Professional Plumbing when Professional Plumbing sends an email to the Customer, so Professional Plumbing may collect and review that information ("collectively Personal Information").
In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Professional Plumbing's website.
The Customer agrees for Professional Plumbing to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Professional Plumbing.
The Customer agrees that Professional Plumbing may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
The Customer consents to Professional Plumbing being given a consumer credit report to collect overdue payment on commercial credit.
The Customer agrees that personal credit information provided may be used and retained by Professional Plumbing for the following purposes (and for other agreed purposes or required by):
(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.
(e) Professional Plumbing may give information about the Customer to a CRB for the following purposes:
(f) to obtain a consumer credit report;
(g) allow the CRB to create or maintain a credit information file about the Customer including credit history.
The information given to the CRB may include:
(a) Personal Information as outlined in 17.3 above;
(b) name of the credit provider and that Professional Plumbing is a current credit provider to the Customer;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Professional Plumbing has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of Professional Plumbing, the Customer has committed a serious credit infringement;
(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
The Customer shall have the right to request (by e-mail) from Professional Plumbing:
(a) a copy of the Personal Information about the Customer retained by Professional Plumbing and the right to request that Professional Plumbing correct any incorrect Personal Information; and
(b) that Professional Plumbing does not disclose any Personal Information about the Customer for the purpose of direct marketing.
Professional Plumbing will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
The Customer can make a privacy complaint by contacting Professional Plumbing via e-mail. Professional Plumbing will
18. **Unpaid Seller's Rights**
18.1 Where the Customer has left any item with Professional Plumbing for repair, modification, exchange or for Professional Plumbing to perform any other service in relation to the item and Professional Plumbing has not received or been tendered the whole of any monies owing to it by the Customer, Professional Plumbing shall have, until all monies owing to Professional Plumbing are paid:
(a) a lien on the item; and
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
The lien of Professional Plumbing shall continue despite the commencement of proceedings, or judgment for any monies owing to Professional Plumbing having been obtained against the Customer.
19. **Dispute Resolution**
19.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either arbitration or the relevant governing agency for the state in which the Works were performed such as in accordance with the Commercial Arbitration Act 2011 or its replacement(s).
20. **Building and Construction Industry Security of Payments Act 2009**
At Professional Plumbing'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 Security of Payments Act 2009 may apply.
Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of Tasmania, except to the extent permitted by the Act where applicable.
21. **General**
21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Tasmania, the state in which Professional Plumbing has its principal place of business, and are subject to the jurisdiction of the courts in that state.
21.3 Subject to clause 13, Professional Plumbing shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Professional Plumbing of these terms and conditions (alternatively Professional Plumbing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
21.4 Professional Plumbing may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
21.5 The Customer cannot licence or assign without the written approval of Professional Plumbing.
21.6 Professional Plumbing may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Professional Plumbing's subcontractors without the authority of Professional Plumbing.
21.7 The Customer agrees that Professional Plumbing may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Professional Plumbing to provide Goods to the Customer.
Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.