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**MAYFAIR PLUMBING AND GASFITTING**

**TERMS AND CONDITIONS**

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## 1. Definitions

- 1.1. “**Client**” shall mean the client or any person acting on behalf of and with the authority of the Client.
- 1.2. “**Contract**” shall have the meaning given to it in clause 2.2 below
- 1.3. “**Goods**” shall mean goods and materials supplied by the Plumber to the Client (and where the context so permits shall include any supply of Services as herein defined).
- 1.4. “**Guarantor**” means that person (or persons), or entity identified in the Quotation who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.5. “**Plumber**” shall mean Mayfair Plumbing and Gas Fitting and its successors.
- 1.6. “**Price**” shall mean the cost of the Goods and/or Services as agreed between the Plumber and the Client subject to clause 6 of these Terms and Conditions.
- 1.7. “**Quotation**” shall mean the quotation, estimate, invoice, work authorisation or any other work commencement documentation provided by the Plumber to the Client.
- 1.8. “**Services**” shall mean all services supplied by the Plumber to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.9. “**Terms and Conditions**” shall mean the terms and conditions set out herein.

## 2. Acceptance

- 2.1. The Plumber reserves the right to refuse or decline any work at its own discretion.
- 2.2. Where:
  - 2.2.1. instructions are received by the Plumber from the Client for the supply of Goods and/or Services which have been accepted by the Plumber in writing or by the actions of the Plumber in commencing work for the supply of those Goods and/or Services for the Client;
  - 2.2.2. the Client accepts of Goods and/or Services supplied by the Plumber; and/or
  - 2.2.3. the Client accepts a Quotation for Goods and/or Services to be supplied by the Plumber to the Client,then there shall be or shall be deemed to be a contract (the “**Contract**”) binding between the Plumber and the Client for the provision of those Goods and Services in accordance with these terms and conditions and any Quotation.
- 2.3. Where more than one Client has entered into the Contract, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.4. These Terms and Conditions are irrevocable and can only be varied in accordance with these Terms and Conditions or with written consent of the manager of the Plumber.
- 2.5. Any terms in respect of the supply of Goods and/or Services contained in or relating to any other documents apart from these Terms and Conditions and the Quotation, including any of the Client’s documents (even if they purport to provide that they prevail), are excluded from the Contract. By accepting the Goods and/or Services the Client acknowledges that these Terms and Conditions and the Quotation prevail over any qualification or condition purported to be imposed in any such other documents.
- 2.6. None of the Plumber’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the

manager of the Plumber in writing nor is the Plumber bound by any such unauthorised statements.

- 2.7. The Client undertakes to give the Plumber not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, email address or business practice).

### 3. Goods

The Goods are as described on the Quotation as provided by the Plumber to the Client.

### 4. Call Out Fee & Charges

- 4.1. The Plumber charges a minimum call out fee for all appointments, regardless of work carried out. This includes work quoted on the per quarter ( $\frac{1}{4}$ ) hour rate set out below, or fixed price work at the amount quoted.
- 4.2. If for any reason we are unable to carry out works during attendance, the minimum call out fee would still be payable for our attendance, plus the cost of any additional labour time per quarter ( $\frac{1}{4}$ ) hour, and parts/materials if used.
- 4.3. The labour charges for the Plumber are:
  - 4.3.1. **Business Hours (Monday to Friday, 8am to 4pm)**
    - a. Call Out Fee – [\$75]
    - b. Subsequent Rate – [\$30] per  $\frac{1}{4}$  hour
  - 4.3.2. **Weekdays After Hours and Saturday (8am to 4pm)**
    - a. Call Out Fee – [\$175]
    - b. Subsequent Rate – [\$68] per  $\frac{1}{4}$  hour
  - 4.3.3. **Saturday After Hours, Sunday, Public Holidays and Night Call Out**
    - a. Call Out Fee – [\$225]
    - b. Subsequent Rate – [\$68] per  $\frac{1}{4}$  hour

### 5. Estimates

- 5.1. All Quotations provided by the Plumber are estimates.
- 5.2. Any estimate supplied by the Plumber is subject to withdrawal at any time before receipt of an unqualified acceptance from the Client, and shall be deemed withdrawn unless it has been accepted within 28 days from its date.
- 5.3. Unless otherwise specified, all estimates provided are done on an 'as is' basis, and are not a fixed price quotation or firm price. The estimate will set out the likely minimum costs involved based on a visual inspection by the Plumber and/or details supplied by the Client. The final price will be calculated based on the original estimate and in accordance with the Plumber's standard rate applicable at the time of works being carried out, and may be increased above the estimated price.
- 5.4. In addition, the Plumber reserves the right to increase the price prior to any works being carried out, equivalent to the increase of cost to the Plumber including additional materials, labour, equipment hire and transport since the date of the provided estimate (either done so in writing, email or orally), unless the final price exceeds the estimated price by more than 10%, by which the Client may cancel the Contract provided it does so prior to any works commencing (including the order of materials or equipment hired).
- 5.5. Any estimate provided by the Plumber may be revised in the following circumstances:

- 5.5.1. If after the submission of the estimate by the Plumber, the Client instructs the Plumber (whether in written or orally) to provide additional works or services not referenced or detailed within the estimate.
- 5.5.2. If following the submission of the estimate by the Plumber, there is an increase in the cost of materials to be supplied.
- 5.5.3. If following the submission of the estimate by the Plumber, it is discovered further works and services need to be carried out which had not been anticipated.
- 5.5.4. If following submission of the estimate or works carried out, it is discovered that there was a manifest error when the estimate was prepared.
- 5.6. The Plumber reserves the right to make a charge for the collection of materials, parts and equipment from any supplier, except for works where an estimate has been provided beforehand. If the collection of said materials takes part whilst the Plumber is on site, the time taken for this will be treated as part of the works, and charged at the applicable rate. If any materials are ordered for subsequent collection and delivery, a charge may be made by the Plumber for the labour costs involved with collection at the rates specified in clause 4.3 of these Terms and Conditions.
- 5.7. The Plumber will not be under any obligation to provide an estimate to the Client. The Plumber will only be bound to estimates provided in writing to the Client, which have also been signed by an authorised representative of the Plumber. The Plumber will not be bound to any estimates provided orally.
- 5.8. The Client will reimburse the Plumber for any and all expenses incurred (including labour, materials and equipment hire) upon acceptance of an estimate which is subsequently cancelled by the Client.

## **6. Price and Payment**

- 6.1. At the Plumber's sole discretion the Price shall be either:
  - 6.1.1. as indicated on invoices provided by the Plumber to the Client in respect of Goods supplied; or
  - 6.1.2. the Plumber's quoted or estimated price (subject to Clause 6.2) which shall be binding upon the Plumber provided that the Client shall accept in writing Plumber's quotation or estimate within thirty (30) days.
- 6.2. Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Plumber's quotation or estimate and will be shown as variations on the invoice. Payment for all variations must be made in full at time of completion.
- 6.3. Time for payment for the Goods shall be of the essence and will be stated on the invoice, Quotation or any other order forms. If no time is stated then payment shall be due within seven (7) days.
- 6.4. At the Plumber's sole discretion, payment for approved Clients shall be made by installments or progress payments in accordance with the Plumber's delivery/ payment schedule.
- 6.5. Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method agreed to between the Client and the Plumber.
- 6.6. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly

included in any quotation or estimate given by the Plumber or where the Price is otherwise required by law to be GST inclusive.

- 6.7. The price shall be increased by the amount of any associated fees such as those by SA Water and any gas and electricity supplier in regards to connection fees and suchlike, including for infrastructure or set up costs, unless these fees are expressly included in the Quotation given by the Plumber.

## **7. Building and Construction Industry Security of Payments Act 2009**

- 7.1. At the Plumber's sole discretion, if there are any disputes or claims from unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 (SA) may apply.
- 7.2. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009, except to the extent permitted by the Act where applicable.

## **8. Delivery of Goods**

- 8.1. Delivery of the Goods shall be made to the Client's address or to any other address if identified accordingly in the Quotation. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 8.2. The Plumber may deliver the Goods by separate installments (in accordance with the agreed delivery schedule). Each separate installment shall be invoiced and paid for in accordance with the provisions in these Terms and Conditions.
- 8.3. Delivery of Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of these Terms and Conditions.
- 8.4. The Client shall take delivery of the Goods tendered notwithstanding that the Goods are different in a minor and insignificant way to the Goods identified on the Quotation.
- 8.5. The failure of the Plumber to deliver shall not entitle either party to treat the Contract as repudiated.
- 8.6. The Plumber shall not be liable for any loss or damage whatever due to failure by the Plumber to deliver the Goods (or any part of them) promptly or at all.

## **9. Risk**

- 9.1. If the Plumber retains property in the Goods or any of them, nonetheless all risk for the Goods passes to the Client on delivery.
- 9.2. If any Goods are damaged or destroyed prior to property in them passing to the Client, the Plumber is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these Terms and Conditions by the Plumber is sufficient evidence of the Plumber's rights to receive the insurance proceeds without the need for any person dealing with the Plumber to make further enquires.

## **10. Plumber's Obligations**

- 10.1. The Plumber will use its best efforts to supply Goods and Services in accordance with the Quotation but will not be liable to the Client for any delays, no matter what the reason including negligence of the Plumber.

- 10.2. The Plumber shall perform work in a professional manner as per Australian Standards.
- 10.3. The Plumber shall perform work with due care and skill The Plumber shall handle any fixtures, fittings, materials and/or equipment provided by the Client with reasonable care.
- 10.4. The Plumber may sub-contract all or any of its obligations or rights provided the Client has provided the Plumber with written consent.

## **11. Warranties**

- 11.1. The Plumber provides 3 months labour warranty on all works for which full payment has been received where the fault relates to the original labour provided by the Plumber.
- 11.2. The warranty shall only be valid on the exact location and works as carried out by the Plumber. The Client must provide original invoice for proof of works.
- 11.3. If any work is faulty due to the Plumber's labour, the Plumber will return and fix it at no additional cost.
- 11.4. If the fault is found to be the plumbing fixtures, fittings or covered under product warranties, the Client will be charged an additional fee for attendance.
- 11.5. No warranty shall be provided on blocked sewer, drainage or storm water as set out in clause 22.2.
- 11.6. For Goods not manufactured by the Plumber, the warranty shall be the current warranty provided by the manufacturer of the Goods not by the Plumber. The Plumber shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty and except and to the extent that when the warranty claim is accepted and fulfilled by the manufacturer to the benefit the Plumber and not the Client.
- 11.7. The Plumber reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.
- 11.8. The Plumber shall not provide warranty on Goods supplied by the Client to be used in the Work by the Plumber.

## **12. Indemnity**

The Client shall indemnify the Plumber against any and all actions, claims, demands, suits, losses, costs, expenses and charges which the Plumber may suffer or incur in connection with a claim by a third party, resulting from a breach of the Client's obligations, undertakings and representations in connection with the Contract.

## **13. Liability**

### **13.1. Non-excludable Rights**

The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Customer in relation to the provision of the goods and services which cannot be excluded, restricted or modified by the Contract.

### **13.2. Disclaimer**

The Client hereby disclaims any right to rescind, or cancel the Contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him/her by any servant or agent of the Plumber and the Client acknowledges that

s/he buys the Goods relying solely upon his/her own skill and judgment and that the Plumber shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall be the sole responsibility of the Client.

### 13.3. **Fixtures and Fittings**

- 13.3.1. The Plumber is not liable for any associated costs in the event that damage is caused to the plaster or decoration to the opposite wall face on single leaf walls whilst replacing tap sets, mixer taps, other relevant items or pipework due to the depth it has to be chased, although reasonable care is always taken.
- 13.3.2. The Plumber is not liable for any associated costs in the event that damage is caused to the tiles or decoration when replacing existing toilet pans and cisterns where they have been incorrectly tiled around. It is not always possible for the Plumber to cover all signs of previous toilet installations due to the size and model of the new pan or cistern to be installed, although reasonable care is always taken and prior advice is given where possible.
- 13.3.3. The Plumber is not liable for any damage caused when removing basins and sinks and cannot guarantee that these will be in a re-usable condition depending on how they were initially installed.

### 13.4. **Additional Costs**

The Client may be liable to pay extra labour and material costs to the Plumber, without limitation, should any of the following occur:

- 13.4.1. Gas leaks found on existing pipework and appliance installations. The Plumber will always carry out a soundness test prior to commencement of work to check the installation for any such leaks, although it is the Plumbers responsibility under the Australian New Zealand Gas Installation Standards to ensure that any such leaks are found, and where necessary the gas supply may be capped-off until the fault is found and repaired.
- 13.4.2. In instances where the gas supply is turned off at the meter or bottles by the Plumber in order to carry out a soundness test, parts within a gas appliance can fail due to not being turned off and serviced for a long period of time including thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies.
- 13.4.3. Fixed replacement prices for hot water systems are for straight forward changeovers only and do not include extra materials and associated labour. All regular parts and associated labour is included in the prices given including new hot and cold relief valves, gas isolation valve, flared union, and insulation lagging. Should the Plumber find that the current positioning of the unit is illegal due to not meeting the required clearances then the Client 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 Client not wish to proceed the Plumber will charge a standard fee in accordance with clause 4 for the time spent on site.

### 13.5. **Burst Pipes**

13.5.1. The Client accepts that where the Plumber is engaged in the repair of a burst pipe where the pipe is showing signs of corrosion or damage, no guarantee will be given. The Plumber advises that the only way to permanently repair this problem is to replace the pipework to make an area free from corrosion or damage, although the Plumber accepts that in most first time instances a quick repair is most cost effective.

13.5.2. The Plumber accepts no responsibility for the need to return to site to remove debris including sand from taps, filters, and valves where the Plumber has carried out a repair to a burst pipe, and the Client accepts that a 'Return Fee' and time spent on site will be chargeable at a standard rate even though reasonable care has been taken to flush through such debris from the line upon completion of the repair.

#### **13.6. Tap Spindles**

13.6.1. The Client accepts that it is not always possible to replace existing standard tap spindles with quarter turn tap spindles, and this is not apparent until the existing tap spindles are removed. In cases where this is possible the Client accepts that a standard fee in accordance with clause 4 for time spent on site will be charged.

13.6.2. The Client accepts that quotes and estimates may need to be increased to cover materials and associated labour where prices have been given for the replacement of standard tap spindles where spindle extensions are required where wall sets have been chased too deeply into the wall.

13.6.3. The Plumber takes no responsibility for damage caused where taps and tap bodies are seized and are required to be removed using larger tools etc. The Plumber will always discuss the options with the Client prior to this occurrence and will take extra care to prevent damages.

#### **13.7. Force Majeure**

The Plumber shall not be liable for any loss or damage resulting from any act of God, fire, natural disaster, Act of Parliament, Government order, strike, war, delay or failure in delivery of Goods and/or Services or from any other circumstances beyond the Plumber's control.

### **14. Defects / Returns**

14.1. The Client shall inspect the Goods on delivery and shall within three (3) months of delivery notify the Plumber in writing of any alleged defect, shortage in quantity, damage or failure to comply with the Quotation. The Client shall afford the Plumber an opportunity to inspect the Goods within a reasonable time following delivery if the client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

14.2. Subject to the provisions of this Clause 14 for defective Goods, which the Plumber has agreed in writing that the Client is entitled to reject, the Plumber's liability is limited to either (at the Plumber's discretion) replacing the Goods or repairing the Goods provided that:

14.2.1. the Client has complied with the provisions of Clause 6;

14.2.2. the Plumber will not be liable for Goods which have not been stored or used in a proper manner; and

- 14.2.3. the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

## **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 the rate of 2.5% per annum compounding daily and shall accrue at such a rate after as well as before any judgment.
- 15.2. If the Client defaults in payment of any invoices when due, the Client shall indemnify the Plumber in relation to the Plumber's actual costs and disbursements in pursuing payment by the Client, including legal costs on a Solicitor and client basis, debt collection agency costs and all of the Plumber's nominees' costs of collection.
- 15.3. Without prejudice to any other remedies the Plumber may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Plumber may suspend or terminate the supply of Goods and/or Services to the Client and any of its obligations under the terms and conditions. The Plumber will not be liable to the Client for any loss or damage the Client suffers because the Plumber exercised its rights under this clause.
- 15.4. If any account remains unpaid at the end of the second month after supply of the Goods an immediate amount, the higher of \$20.00 shall be levied for administration fees which sum shall become immediately due and payable.
- 15.5. In the event that:
  - 15.5.1. any money payable to the Plumber becomes overdue, or in the Plumber's opinion the Client will be unable to meet its payments as they fall due; or
  - 15.5.2. the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 15.5.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client,then without prejudice to the Plumber's other remedies at law:
  - 15.5.4. the Plumber shall be entitled to cancel all or any part of the order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
  - 15.5.5. all amounts owing to the Plumber shall, whether or not due for payment, immediately become payable in addition to the interest under Clause 15.1 hereof.
- 15.6. The Plumber provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date or any other date, whether stated in these terms and conditions, a Quotation or elsewhere.
- 15.7. The liability of the Plumber under or in connection with the Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise will not exceed the payments paid by the Client to the Plumber under the Contract.
- 15.8. The Plumber is not liable to the Client in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Client of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

**16. Title**

- 16.1. It is the intention of the Plumber and agreed by the Client that property in the Goods shall not pass until:
  - 16.1.1. The Client has paid all amounts owing for the particular Goods, and
  - 16.1.2. The Client has met all other obligations due by the Client to the Plumber in respect of all contracts between the Plumber and the Client, and that where practicable the Goods shall be kept separate until the Plumber shall have received payment and all obligations of the Client are met.
- 16.2. Receipt by the Plumber of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Plumber's ownership of rights in respect of the Goods shall continue.
- 16.3. Until such time as ownership of the Goods shall pass from the Plumber to the Client the Plumber may give notice in writing to the Client to return the Goods or any of them to the Plumber. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- 16.4. The Plumber shall have the right of stopping the Goods in transit whether or not delivery has been made and if the Client fails to return the Goods to the Plumber when requested by the Plumber then the Plumber or the Plumber's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods.
- 16.5. The Client is only bailee of the Goods and until such time as the Plumber has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Plumber.
- 16.6. The Client shall not deal with the money of the Plumber in any way which may be adverse to the Plumber.
- 16.7. The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Plumber.
- 16.8. The Plumber may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Plumber arising out of the Contract, and the Plumber may take any lawful steps to require payment of the amounts due and the Price.
- 16.9. The Plumber can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- 16.10. Until such time that ownership in the Goods passes to the Client, if the Goods are so converted, the parties agree that the Plumber will be the owner of the end products.

**17. Cancellation**

The Plumber may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Plumber shall not be liable for any loss or damage whatever arising from such cancellation. At the Plumber's sole discretion the Client may cancel delivery of Goods. In the event that the Client cancels delivery of Goods the Client shall be liable for any costs incurred by the Plumber in relation to those Goods.

**18. Unpaid Plumber's Rights to Dispose Goods**

- 18.1. In the event that:

- 18.1.1. the Plumber retains or regains possession or control of the Goods; and
  - 18.1.2. payment of the Price is due to the Plumber; and
  - 18.1.3. the Plumber has made demand in writing of the Client for payment of the Price in terms of the Contract; and
  - 18.1.4. the Plumber has not received the Price of the Goods,
- then, whether the property in the Goods has passed to the Client or has remained with the Plumber, the Plumber may dispose of the Goods and may claim from the Client the loss to the Plumber on such disposal.

## **19. Lien & Stoppage in Transit**

- 19.1. Where the Plumber has not received or been tendered the whole of the price, or the payment has been dishonoured, the Plumber shall have:
  - 19.1.1. a lien on the goods;
  - 19.1.2. the right to retain them for the Price while the Plumber is in possession of them;
  - 19.1.3. a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed, and
  - 19.1.4. a right of resale.
- 19.2. The foregoing right of disposal, provided that the lien of the Plumber shall continue despite the commencement of proceedings or judgments for the price having being obtained.

## **20. Rock and filled ground**

Unless specifically stated in writing, the Plumber's quotes and estimates do not include rock excavation, dewatering or supportive work such as pier and beams for filled or made up ground.

## **21. Buried or unseen services**

- 21.1. The Client will indemnify the Plumber and keep the Plumber indemnified against any liability, loss, claim or proceedings of any kind (whether arising under statute or common law) arising from services which are buried or unseen being disturbed or damaged.
- 21.2. In the event that buried or unseen services within a properties boundary are disturbed or damaged, the Plumber will not be liable for any repair work and any repair work required will be paid at the Client's expense. However, reasonable care is always taken in order to help prevent this occurrence.

## **22. Drains and Sewer**

- 22.1. The Client acknowledges being advised that the presence of plant/tree root growth and/or blockages in drains generally indicates damaged pipes.
- 22.2. The Client acknowledges and agrees that these pipes cannot be fixed by simply removing "plant/tree root growth" or cleaning the drain. Therefore, no warranty is provided for this situation arising again in the future and in respect of any work carried out in relation hereto.
- 22.3. The Client acknowledges that Close Circuit Television (CCTV) is a specialist piece of equipment which may or may not be used at the Plumber's sole discretion in an attempt to identify the source of the blocked drain. Should CCTV equipment be used the Client acknowledges that additional charges will imposed.

- 22.4. Should any Plumber's equipment become lodged or damaged in the Client's drain it will be removed & / or repaired at the Client's expense (includes materials, parts & labour) or monetary compensation to the total replacement of same or higher quality value will become payable to the Plumber immediately.

### **23. Privacy Act 1988**

- 23.1. The Client and/or the Guarantor's agree for the Plumber to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Plumber.
- 23.2. The Client and/or Guarantor's agree that the Plumber may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purpose:
- 23.2.1. To assess an application by Client
  - 23.2.2. To notify other credit providers of a default by the Client
  - 23.2.3. To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers and
  - 23.2.4. To assess the credit worthiness of Client and/or Guarantor/s.
- 23.3. The Client consents to the Plumber being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- 23.4. The Client agrees that Personal Data provided may be used and retained by the Plumber for the following purposes and for other purposes as shall be agreed between the Client and Plumber or required by law from time to time:
- 23.4.1. provision of Services & Goods;
  - 23.4.2. marketing of Services and/or Goods by the Plumber, its agents or distributors in relation to the Services and Goods;
  - 23.4.3. analyzing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
  - 23.4.4. processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
  - 23.4.5. enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
- 23.5. The Plumber may give information about the Clients to a credit reporting agency for the following purposes:
- 23.5.1. to obtain a consumer credit report about the Client; and/or
  - 23.5.2. allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

### **24. Australian Consumer Law**

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth as contained in Australian Consumer Law as contained in the Competition and Consumer Act 2010 (Cth) and enacted by the Fair Trading Act 1987 (SA), except to the extent permitted by those Acts where applicable.

### **25. Intellectual Property**

- 25.1. Where the Plumber has designed or drawn Goods or work to be provided for the Client, then the copyright in those designs and drawings shall remain vested in the

Plumber, and shall only be used by the Client at the Plumber's discretion and with written consent to do so.

- 25.2. The Client warrants that all designs or instructions to the Plumber will not cause the Plumber to infringe any intellectual property in the execution of the Client's order.

## **26. Dispute Resolution**

- 26.1. If a dispute arises between the parties to the Contract, then either party shall send to the other party a notice of dispute in writing adequately identifying & providing details of the dispute. Within seven (7) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute.
- 26.2. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered or sent by certified mail to the other party refer such dispute to Consumer Business Services.

## **27. General**

### **27.1. Severability**

If any 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.

### **27.2. Alteration**

The Plumber reserves the right to review these terms and conditions at any time and from time to time, if following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Plumber notifies the Client of such change.

### **27.3. Governing Law and Jurisdiction**

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of South Australia. The parties to the Contract submit to the non-exclusive jurisdiction of the Courts of South Australia.

### **27.4. Entire Agreement**

Both parties acknowledge that these Terms and Conditions represent the entire agreement between the parties and supersedes all and any communications, negotiations, arrangements and agreements, whether oral or written, between the parties in respect of the matters that are the subject of these Terms and Conditions.