

## TERMS AND CONDITIONS

These Terms and Conditions apply to any order placed by a Customer for any Goods and/or Services provided by The Trustee for the Nettleton Family Trust Trading as Adam Plumbing and Gas.

For the purposes of this Agreement:

**"Agreement"** shall mean these Terms and Conditions together with any Quote provided to the Customer;

**"Australian Consumer Law"** means the Australian Consumer Law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth) as amended from time to time;

**"Business Day"** means a day on which the banks are open for general banking business in South Australia except Saturday, Sunday and public or statutory holidays;

**"Contractor"** means The Trustee for Nettleton Family Trust Trading as Adam Plumbing and Gas (ABN 78 360 353 634) and any representatives acting on its behalf ;

**"Customer"** means any individual and/or business entity who place any order for any Goods and/or Services provided by the Contractor;

**"Goods"** means plumbing and/or gas related Goods and associated components as specifically described to the Customer and/or contained within any Invoice and other paperwork that may be supplied to the Customer by the Contractor;

**"GST"** means Goods and Services Tax payable under the GST Act.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

**"Intellectual Property"** means know-how, systems, manuals, trade secrets, copyright, trademarks, eligible layouts and patents.

**"Invoice"** means the invoice for payment provided by the Contractor to the Customer for the Works in whole or in part;

**"Services"** means the plumbing and/or gas related services and/or maintenance supplied to the Customer by the Contractor;

**"Site"** means the place where the Contractor is to provide the Goods and/or Services to the Customer;

**"Quote"** means any quote for Goods and/or Services provided to the Customer by the Contractor from time to time; and

**"Works"** means any and all Goods and/or Services provided by the Contractor to the Customer.

### 1. QUOTE

- 1.1. The Contractor shall specify prior to commencing the Works the Goods and/or Services required to carry out the Customer's instructions and outline an estimate of the Contractor's charge for the performance of such Services and the cost of the Goods and/or delivery.
- 1.2. The Contractor need not supply or provide the Goods and/or Services until the Customer accepts the Quote and this Agreement.
- 1.3. Quote prices will remain current for thirty (30) days from the date of the Quote.
- 1.4. Unless otherwise stated, the price for the Goods and Services is GST exclusive.
- 1.5. The price specified in the Quote may be subject to change by the Contractor notifying the Customer of the same.
- 1.6. The Contractor will in its sole discretion quote a minimum of a three-hour base charge for any Works that are to be provided to the Customer outside of the Contractor's ordinary working hours.

### 2. PRICE

The price payable by the Customer to the Contractor for the Goods and/or Services is the price specified in the Quote, which can be varied in accordance with this Agreement.

### 3. ACCEPTANCE

- 3.1. The following shall be deemed acceptance by the Customer of the Quote and the Agreement:
  - 3.1.1. the Customer verbally accepting the Quote ;
  - 3.1.2. a written acceptance, whether by post, email correspondence, fax or other means which state that the Customer accepts the Quote; and
  - 3.1.3. payment of any deposit as may be specified in the Quote to the Contractor;
  - 3.1.4. the Customer instructing the Contractor to commence work at the Site after receiving the Quote.

### 4. DEPOSITS

- 4.1. The Contractor may, in its sole discretion, require a deposit to be paid before commencing the Works.
- 4.2. A minimum deposit, if required, will be specified in the Quote and is payable by the Customer within two (2) Business Days of the Customer accepting the Quote. This deposit is non-refundable unless otherwise specified in this Agreement.

### 5. PAYMENT

- 5.1. Payment for Goods and/or Services for domestic Customers must be made in full by the Customer to the Contractor within seven (7) days from receipt of any Invoice, which will be issued at the Contractor's discretion.
- 5.2. Payment for Goods and/or Services for commercial Customers must be made in full by the Customer to the Contractor within thirty (30) days from receipt of any Invoice.
- 5.3. The provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA) may apply, at the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services for commercial Customers.
- 5.4. If the Customer fails to make any payment for the Goods and/or Services when payment falls due, then the Customer may, without prejudice to any other right or remedy of the Contractor:
  - 5.4.1. Be charged interest at a rate of 2% per month cumulative which is to be calculated on a day to day basis on any monies owed to the Contractor. The parties agree that such amounts are not a penalty but a true measure of the damages incurred by the Contractor. Payments received from the Customer will be credited first against any account keeping fees and interest, and all such fees shall be payable by the Customer on demand from the Contractor;
  - 5.4.2. Be charged an administrative fee of \$25.00 AUD for each time the Contractor has to follow up with the Customer for late payment;
  - 5.4.3. Pay the Contractor for any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay the Contractor all sums outstanding as owed by the Customer to the Contractor including but not limited to debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis; and
  - 5.4.4. Stop the Works until such time as the Customer makes payment for any outstanding amounts in full. If the Contractor stops Works as a result of the Customer's failure to make payment to the Contractor then the Contractor will not be liable to the Customer for any costs, expenses or losses incurred by the Customer as a result of the Contractor stopping Works.
- 5.5. The Customer acknowledges and agrees that the Contractor may, at its sole and absolute discretion, apply any amounts received from the Customer towards any amounts that may be owing from the Customer to the Contractor in any such order as is determined by the Contractor.

### 6. VARIATIONS

- 6.1. Any oral and/or written variations sought by the Customer relating to Works in progress and/or to be undertaken by the Contractor are subject to approval by the Contractor.
- 6.2. The Contractor will be entitled to vary any Quote provided to the Customer if:
  - 6.2.1. the Customer requires a variation, orally or in writing, which is accepted by the Contractor;
  - 6.2.2. the Customer provides incomplete or inaccurate information to the Contractor in order for it to complete the Works;
  - 6.2.3. the Contractor encounters any rock, underground water, foreign objects or existing services whilst undertaking the Works;
  - 6.2.4. the condition of the Site between provision of the Quote and commencement of the Works on Site have changed, through no fault of the Contractor.

### 7. CANCELLATION

- 7.1. The Contractor:
  - 7.1.1. May cancel its obligations to supply the Goods and/or Services under the Agreement by giving written notice to the Customer, at any time before the deposit is paid by the Customer under clause 4.1 and 4.2; or
  - 7.1.2. May, if the Customer has breached the Agreement and the Contractor has given the Customer written notice of the breach

providing them fourteen (14) days to remedy the breach and the Customer has failed to remedy the breach within this timeframe, cancel its obligation to supply the Goods and/or Services remaining under the Agreement by giving written notice to the Customer; and

7.1.3. May immediately cancel the Agreement if the Customer:

- 7.1.3.1. is declared bankrupt; or
- 7.1.3.2. has a receiver, agent or manager appointed for all or substantially all of the property of the Customer; or
- 7.1.3.3. enters into an arrangement or composition with its creditors; or
- 7.1.3.4. becomes insolvent within the meaning of section 95A of the *Corporations Act 2001 (Cth)*.

7.1.4. Shall not be liable for any loss or damage from the cancellation of the Agreement under this clause.

7.2. The Customer:

7.2.1. May cancel its obligations under the Agreement by giving written notice to the Contractor, at any time before the deposit is paid by the Customer under clauses 4.1 and 4.2; and

7.2.2. May immediately cancel the Agreement if the Contractor:

- 7.2.2.1. is declared bankrupt; or
- 7.2.2.2. has a receiver, agent or manager appointed for all or substantially all of the property of the Contractor; or
- 7.2.2.3. enters into an arrangement or composition with its creditors; or
- 7.2.2.4. becomes insolvent within the meaning of section 95A of the *Corporations Act 2001 (Cth)*.

7.3. If the Customer cancels the Agreement outside of clause 7.2 herein then the Customer must reimburse the Contractor for any costs, expenses or losses incurred by the Contractor as a result of the Customer's cancellation. The Customer must make payment for such cancellation costs incurred within seven (7) days from receipt of an invoice from the Contractor detailing such costs.

## 8. EXTENSION OF TIME

8.1. The Contractor shall be entitled to an extension of time to complete the Works if the supply of Goods or the provision of the Services is delayed through no fault of the Contractor.

## 9. EXCLUSIONS

9.1. Unless a Good and/or Service is specified in the Quote it should be presumed to be excluded from the Works.

## 10. SITE ACCESS AND CONDITION

10.1. The Customer will ensure that the Contractor has clear and uninterrupted access to the Site until any and all Works have been completed.

10.2. The Customer shall indemnify the Contractor for any additional costs if completion of the Work is delayed because of interrupted Site access.

## 11. BURIED OR UNSEEN SERVICES

11.1. Any existing services including but not limited to buried or unseen services are to be located by the Customer and the Customer agrees to supply the Contractor with scaled plans of these services on Site at least two (2) Business Days before the Contractor's proposed Works are to commence.

11.2. In the event that any existing, buried or unseen services are disturbed or damaged on Site whilst the Goods and/or Services are being supplied by the Contractor, the Contractor will not be liable for any repair work and any repair work required by the Customer will be undertaken by the Contractor and will constitute a Variation under clause 6 of this Agreement and will be paid to the Contractor by the Customer, at the Customer's expense.

11.3. The Customer agrees to supply the Contractor with scaled plans of underground pipes and cables on Site at least two (2) Business Days before the Contractor's proposed Works are to commence and to mark out precisely the location where the Goods and/or Services are to take place and the Customer shall be responsible or liable for any loss, damage or costs of alterations or repositioning of the location of the Goods and/or Services in the event that the Contractor incurs losses in that regard if the Customer's instructions are incorrect or not provided and the Services are provided in a position that does not comply with all relevant legislation, regulations, standards or guidelines. The Contractor is not required to follow up the Customer for these plans, it is an obligation of the Customer to undertake the matters outlined in this clause.

11.4. If the Customer fails to provide the Contractor with the appropriate plans for the Site the Customer will indemnify the Contractor from any and all claims for costs, expenses and/or losses it has against the Contractor and that any third party may have against the Contractor resulting from the Customer's failure under this clause.

11.5. The Customer warrants in instructing the Contractor to carry out the Works that the Site is free of harmful materials such as asbestos, and that all building works previously undertaken at the Site were undertaken, within reason, in accordance with all relevant industry standards. Should the Contractor be required to add to, alter or modify any existing installation at the Site as a result of non compliance with relevant industry standards the Contractor shall in its discretion modify the Quote.

## 12. OWNERSHIP AND RISK

12.1. The Contractor remains the owner of the Goods until payment has been made in full to the Contractor.

12.2. The Customer must not sell or otherwise deal with the Goods until payment has been made in full to the Contractor. If the Customer sells or otherwise deals with the Goods before payment has been made in full, the proceeds or records of dealings from these actions must be kept identifiable and separate from all other transactions and dealings of the Customer until the Contractor has been paid in full.

12.3. If any account of the Customer with the Contractor is in default, the Contractor reserves the right to repossess any Goods provided to the Customer.

12.4. Upon delivery of the Goods by the Contractor to the site, the Customer bears any and all responsibility and liability in ensuring the Goods are secured.

12.5. Notwithstanding clauses 12.1, 12.2 and 12.3 risk of loss of or damage to the Goods passes to the Customer upon delivery/pick-up.

12.6. The Customer is liable to reimburse the Contractor for the theft and/or damage of Goods at the site during the completion of the Works through the Customer's insurance scheme or otherwise, as if the Works have already been completed (or part thereof) before the and/or damage for costs of resupplying the Goods and/or Services to repair any loss and damage resulting from the theft and/or damage.

## 13. RETURN CREDIT

13.1. The Contractor will only accept returns of the Goods if prior arrangements for the return have been made.

## 14. CONTRACTOR LIABILITY:

14.1. The Contractor shall not be liable for any damage to the Goods and/or Services caused by the Customer or third parties and shall not be required to indemnify any party for any damage caused by others.

14.2. The Contractor will not be liable for any delays caused by any person other than the Contractor or any of its representatives.

14.3. Subject to the Australian Consumer Law, the Contractor will not be liable for any consequential or indirect losses.

## 15. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA):

15.1. Until the Contractor receives payment for all monies owed to it, the Customer acknowledges that the Contractor has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to the Contractor.

15.2. The Customer acknowledges that the Agreement constitutes a Security Agreement for the purpose of the PPSA.

15.3. On default of payment the Customer irrevocably permits the Contractor, or any person authorised in writing by the Contractor, upon reasonable notice to enter the Customer's premises or any premises where the Goods are reasonably believed by the Contractor to be held on the Customer's behalf. The Customer also agrees to indemnify the Contractor for all costs and expenses of recovery of the Goods and losses, if any, on their resale and any damage to property incurred as a result of any such removal.

15.4. The Customer undertakes to do anything (such as obtaining consents, producing documents or getting documents completed or signed) which the Contractor considers reasonably necessary for the purposes of ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective.

15.5. To the extent permitted by law, the Customer waives its rights to:

- 15.5.1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d) and 135 of the PPSA;
- 15.5.2. redeem the Goods under section 142 of the PPSA;
- 15.5.3. reinstate the Security Agreement under section 143 of the PPSA;
- 15.5.4. receive a Verification Statement.

15.6. Nothing in this clause prevents the Contractor from taking collection or legal action to recover any monies owed to it from time to time.

## 16. INSTRUCTIONS AND COMMUNICATIONS

16.1. The Contractor shall only receive instructions from the Customer's representative who has accepted the Quote. If the Customer authorises any other person, employee or agent to give the Contractor instructions in lieu of or in addition to the person who has accepted the Quote then the Customer must inform the Contractor of that person's details.

- 16.2. The Contractor shall not be liable in any way for any losses incurred by the Customer in accepting instructions from the persons contemplated by this clause. The Contractor may elect to communicate by electronic mail or such other form as is convenient, and does not warrant that any such communication will be free from defect, virus or shall otherwise be secure. The Customer hereby acknowledges and agrees to accept such communications and releases the Contractor from all liability in respect of any losses that may be incurred by the Customer from such communications.
- 16.3. The Contractor may elect to communicate by electronic mail or such other form as is convenient, and does not warrant that any such communication will be free from defect, virus or shall otherwise be secure. The Customer hereby acknowledges and agrees to accept such communications and releases the Contractor from all liability in respect of any losses that may be incurred by the Customer from such communications.
- 17. DEFECTS**
- 17.1. The Customer must inspect all Goods provided on delivery to Site or at completion of the Works, and within two (2) days of delivery to Site or completion of the Works notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or the Quote. The Customer must provide the Contractor with a reasonable opportunity to inspect, agree with, and/or modify any defect or damage.
- 18. LIMITATION OF LIABILITY**
- 18.1. The Agreement does not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which cannot be excluded, restricted or modified.
- 18.2. To the extent permitted by law, all terms, conditions, warranties and representations, expressed or implied, by statute or otherwise, are hereby expressly excluded.
- 18.3. To the extent permitted by law, the Contractor shall not be liable to the Customer for any injury, harm, loss, damage, costs, expense or other claim including economic loss or loss of profits however arising from the supply of the Goods and/or Services or arising from any breach, default or negligence of the Contractor in connection with the supply of the Goods and/or Services.
- 19. FORCE MAJEURE**
- 19.1. The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to supply the Goods and/or complete the Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, vandalism, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal Contractors to supply the necessary material or any other matter beyond the Contractor's control.
- 20. CONFIDENTIALITY**
- 20.1. The parties shall, except for legal and other advisors, keep strictly confidential between them all information shared under the Agreement.
- 21. SUPPLY AUTHORITY, LEGISLATIVE AND STATUTORY CHARGES**
- 21.1. The Contractor shall be entitled to be reimbursed all the costs and charges levied by any statutory or other authority with respect to the Works.
- 22. PRIVACY**
- 22.1. The Customer hereby authorises the Contractor to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 (Cth), to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reference organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 22.2. The Customer also authorises the Contractor to make enquiries with respect to the Customer's consumer and commercial credit worthiness, to exchange information with other credit providers in respect of previous consumer and commercial defaults of the Customer and to notify other credit providers of a consumer and/or commercial default by the Customer.
- 23. DISPUTE RESOLUTION**
- 23.1. Any disputes between parties arising from the performance of provisions of the Agreement and/or the Quote must be attempted to be settled between the parties by an authorized representative with authority from each party meeting within fourteen (14) days of notification of a dispute in writing from one party to the other party. Such a meeting is to take place within the state of South Australia at a place nominated by the Contractor.
- 23.2. If the meeting referred to at clause 23.1 above does not result in settlement of the dispute between the Contractor and the Customer, the dispute may then be referred to mediation, if agreed by both parties. The Mediator is to be appointed by agreement between the parties and in the event that the parties agree to mediate but cannot agree to the mediator to be appointed then the mediator is to be appointed by the then current President of the Law Society of South Australia. The costs of any mediation are to be borne equally between the Contractor and the Customer.
- 23.3. If the dispute cannot be settled through mediation, or the parties do not both consent to a mediation, then either party is at liberty to commence legal proceedings.
- 23.4. During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of the Agreement which are not under dispute.
- 24. ASSIGNMENT**
- 24.1. The Contractor can assign their interest in the Agreement to any third party whatsoever without consent of the Customer and agrees to advise the Customer as soon as is practicable after any such assignment is made.
- 24.2. This Agreement shall not be assigned by the Customer without prior written consent of the Contractor with such consent not to be unreasonably withheld.
- 24.3. Any consent that may be given by the Contractor may be granted or withheld in the Contractor's absolute discretion and shall not at any time constitute a waiver of the Contractor's rights and interests under this Agreement.
- 25. GUARANTEE**
- 25.1. The person signing this Agreement on behalf of the Customer hereby guarantees the payment of all monies that become due and payable under this Agreement. This Guarantee will continue following the termination of this Agreement until all monies owing to the Contractor are paid in full. If the Customer is a Trustee of a Trust then the Contractor will require that disclosure of the Customer's CAN and/or ABN be provided to the Contractor in addition to a copy of any relevant trust deed and/or amending deeds. Failure of the Contractor to request such information from the Customer will not release the Customer from the above Guarantee.
- 26. GST AND OTHER TAXES**
- 26.1. The Customer must pay to the Contractor Goods and Services Tax on the Goods and/or Services as is required by the Australian Taxation Office as well as any other taxes, duties, fees and levies for the Goods and/or Services supplied that may be applicable. The amount the Customer owes the Contractor will be stated in the Invoice to the Customer.
- 27. GENERAL MATTERS**
- 27.1. This Agreement contains the entire agreement between the Contractor and the Customer. The parties agree that any negotiations that led to this Agreement have been accurately incorporated in this Agreement.
- 27.2. In entering into this Agreement the parties hereby acknowledge that they have not made any warranties or representations to each other except as incorporated in this Agreement.
- 27.3. This Agreement is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia.
- 27.4. The Customer acknowledges that any and all Intellectual Property relation to the Goods and/or Services remains the sole and exclusive property of the Contractor.
- 27.5. The Customer undertakes to obtain and provide the necessary local government authority approvals for the provision of the Services, if necessary.
- 27.6. Any and all statutory and local government consents (including but not limited to planning or building approvals) relevant to the Services must be obtained by the Customer at its sole cost.
- 27.7. If any part of this Agreement is found to be void, voidable or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has under this Agreement.
- 27.8. The Contractor may from time to time request a copy of the Customer's Counsel Rates documentation or any other documentation which discloses the title and/or ownership details of the Site and the Customer shall provide the same to the Contractor within seven (7) days of such request.
- 27.9. Any notice to be provided to either party shall be in writing and may be given personally, be sent by express or registered post, by facsimile transmission or by email with receipt confirmation.

