

1. **DEFINITIONS**

In these Terms: "Agreement" means any agreement or arrangement between the Contractor and the Customer for delivery of the Works; "Contractor" means Metro Civil (Vic) Pty Ltd ABN 89 632 149 832 trading as Metro Civil (Vic), its successors and assigns and any person acting on behalf of and with the due authority of Metro Civil (Vic); "Customer" means the person or entity who has entered into a contract, transaction or arrangement to obtain Services or Goods from the Contractor or its agents; "Goods" means all goods supplied or to be supplied by the Contractor to the Customer; "Inspection Component" means any final inspection, testing or supervision required pursuant to section 221ZH of the *Building Act 1993*, as part of the plumbing work performed, as defined under the *Building Act 1993*, at no additional cost to the Customer; "PPSA" means the *Personal Property Securities Act 2009* (Cth); "Price" means the amount payable to the Contractor for the Works; "Services" means all services supplied or to be supplied by the Contractor to the Customer; The Services include the Inspection Component; "Site" means the place or places where the Goods and Services will be supplied; "Terms" means these terms and conditions; "Works" means the Goods and Services or any combination of them, supplied or to be supplied by the Contractor to the Customer or at their request, as the case may require.

2. **APPLICATION OF THESE TERMS**

Unless otherwise agreed by the Contractor in writing, the Agreement is governed by these Terms to the exclusion of any other written or oral agreements or understandings (if any) entered into between the Contractor and the Customer in connection with the supply of the Works.

3. **QUOTES**

3.1 Quotes are valid for 30 days only.

3.2 The Contractor may vary a quoted Price to take into account an increase in the supply costs, wages, duties, taxes or like charges that the Contractor has incurred or will or is likely to incur in the delivery of the Works.

3.3 Acceptance of the quote is by the Customer's advice either in writing, or by conduct, that the quote is accepted.

3.4 Purchase orders issued to Metro Civil (Vic) Pty Ltd confirm the acceptance of the quote and the terms and conditions.

4. **PAYMENT**

4.1 The Customer agrees to pay the Contractor a 50% deposit prior to works commencing on amounts over \$10,000

4.1 The Customer will pay to the Contractor the remaining 50% on completion of works or within 14 days of an invoice being issued by the Contractor to the Customer as agreed by the Contractor.

4.2 If the Customer does not pay an invoiced amount in full within 14 days, then the Customer will pay the Contractor interest on all amounts outstanding at the rate of 5 per cent above the current penalty interest rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) (compounded daily).

5. **SITE PLANS AND INFORMATION**

5.1 The Customer must provide to the Contractor plans of the Works and all underground features, pipes and cables on the Site at least five (5) working days before the Contractor commences the Works.

5.2 If the Customer does not provide the plans, then the Customer indemnifies the Contractor against any liability, loss, claim or proceedings of any kind arising from the Works.

6. **PERMITS & PERMISSION**

The Customer will obtain all necessary permits, permissions and authorisations for the Works before the Works commence, if not quoted for in the scope of works by the contractor.

7. **SITE ACCESS**

7.1 The Customer warrants that it is entitled to authorise Works on the Site and will ensure that the Site is cut and cleaned, and the Contractor has clear and uninterrupted access to the Site until the works have been completed and the Contractor is paid in full.

7.2 The Customer indemnifies the Contractor from all costs, losses, damages, penalties, or expense resulting from lack of access to the Site or restrictions on the Contractor from performing the Works, as the contractor determines for any reason.

8. **SOUND LEVELS**

The Contractor will attempt to keep sound levels within reasonable levels, but it cannot be held responsible for the sound level of any equipment used in the course of the Works.

9. **ELECTRICITY AND WATER**

The Customer will ensure that the Contractor has free and convenient access to electricity and water at the Site for the term of the Agreement, at no cost to the Contractor.

10. **RISK**

The risk in the Goods shall pass to the Customer upon delivery and installation of the Goods to the Customer or Site.

11. **RETENTION OF TITLE**

Notwithstanding the delivery or installation of the Goods, title in the Goods shall remain with the Contractor until the Customer has paid all amounts owing pursuant to any invoice issued by the Contractor for the Works, including all applicable GST and other taxes, levies and duties. Where the Goods have been on sold by the Customer, the Customer will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds.

12. **PPSA**

12.1 The Agreement creates, for the purposes of the PPSA, a security interest in the Goods that have or will be supplied by the Contractor to the Customer or at the Customer's direction.

12.2 The parties agree that sections 96, 120 and 125 of the PPSA do not apply to the security agreement created by the Agreement.

12.3 The Customer waives their right to receive a verification statement or any other notice under the PPSA (including notices in accordance with sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA).

12.4 The Customer waives their rights as a grantor or as a debtor under sections 142 and 143 of the PPSA.

12.5 Nothing in this clause is intended to have the effect of modifying or contracting out of any part of the PPSA which cannot lawfully be modified or contracted out of and this clause must be read and construed subject to the provisions of the PPSA.

13. **CHARGE**

To the extent permissible by law (including the National Credit Code), the Customer hereby charges:

- (a) all property both equitable and legal, present or future of the Customer; and or the Site owned by the customer.
- (b) in respect of any amounts that may be owing by the Customer to the Contractor. The Customer consents to the Contractor registering a caveat over any real property owned by the Customer in support of the charge at any time. Caveat shall be withdrawn once all payment obligations have been met.

14. **INTELLECTUAL PROPERTY**

Except by way of limited license to the extent necessary for the delivery of the Works, all intellectual property belonging to or created by or on behalf of the Contractor is and remains the Contractor's sole property.

15. **VARIATIONS TO ROCK/SHALE BORING AND EXCAVATION**

If the contractor encounters Rock/Shale on the project or needs to bore or excavate in rock, it is Agreed by the customer that the contractor will notify the customer via phone or email and will Continue with the works to the agreed variation cost/rate, accepted in the quote by the customer as stated in the exclusions section

16. **OTHER VARIATIONS**

Any Variations must be agreed in writing by the Site representative or other representative of the Contractor and the Customer. The Customer agrees to promptly authorise or reject the proposed variation. The Customer and the Contractor agree that authorisation by text message or email will be sufficient. Excluding Clause 15.

Unless specifically provided for, a Variation may include, but is not limited to the following: Crushed rock backfill; Soil removal; Repair of damage to Works (other than damage caused by the Contractor); Reinstatement works to the Site or to a property which neighbours the Site. and the adjustment of works and the reinstatement of any underground services encountered during the works, should the "Dial Before You Dig" report prove to be inaccurate, all additional costs will be incurred by the customer.

17. **DISPUTE RESOLUTION**

Subject to clause 17.1, if a dispute arises between the parties under or in connection with this Agreement, senior representatives of the parties must meet in good faith and use reasonable endeavours to resolve the dispute as quickly as possible. Each party must continue to perform its obligations under the Agreement pending resolution of any dispute, provided that the Customer pays the Contractor or provides security in a form acceptable to the Contractor for any amount payable in respect of a matter the subject of a dispute pending the dispute's resolution.

18. **TERMINATION**

18.1 Any party may terminate the Agreement by written notice at any time if the other party:

- (a) breaches the Agreement in a manner that is not capable of being remedied.
- (b) fails to remedy a breach of the Agreement which can be remedied within 14 days after the date of a written notice to do so: or
- (c) is unable to pay its debts as and when they fall due.
- (d) fails to remedy a dispute, if so, the customer will pay the contractor for all works completed to date. This varied payment amount will be determined by the contractor based on works completed.

18.2 If the Customer terminates the Agreement other than in accordance with these Terms, the Contractor may, without prejudice to its rights, invoice the Customer for time spent pursuant to the Agreement, charged at the Contractor's usual rates (details available on request) and for all expenses it will incur under the Agreement.

18.3 This clause does not limit any right or remedy available to a party under or in connection with the Agreement.

19. **LIABILITY**

19.1 Nothing in the Agreement excludes, restricts or modifies any guarantee, condition, warranty, right, obligation or remedy implied or imposed by any statute which cannot lawfully be excluded, restricted or modified. The Agreement must be read and construed subject to any such statutory provisions (including without limitation the Australian Consumer Law and the Building and Construction Industry Security of Payment Act 2002).

19.2 To the extent permitted by law the Contractor's liability is limited (at the Contractor's option) to:

- (a) in the case of Goods:
 - (i) the replacement of the Goods or the supply of equivalent Goods.
 - (ii) the repair of such Goods.
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods: or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
 - (i) the supplying of the Services; or
 - (ii) the payment of the cost of having the Services supplied again.

19.3 To the extent permitted by law, the Contractor will not be liable, in contract, tort or statute for pre-contract or other representations (other than fraudulent or grossly negligent misrepresentations) or otherwise, out of or in connection with the Agreement or for any economic loss (including without limitation, loss of revenues, data, profits, contracts, business or anticipated savings) or loss of goodwill or reputation or consequential or special or indirect losses suffered or incurred by that party arising out of or in connection with the Works.

19.4 To the extent permitted by law the Contractor will have no liability to the Customer in relation to any costs, losses, damages, penalties or expense caused by the Contractor's failure to deliver the Works as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, industrial dispute, delay, the failure of the Contractor's suppliers to supply materials, or any other matter beyond the Contractor's reasonable control. The Contractor will have no liability for any delays in the delivery of the Works provided it has a reasonable explanation for such delay.

20. **WARRANTY**

20.1 Subject to these Terms, the Contractor agrees to carry out the Works in a professional manner and to the relevant Australian Plumbing Standards.

21. **GENERAL**

21.1 The law of Victoria, Australia, governs the Agreement. The parties' consent to the jurisdiction of the Courts of the State of Victoria and their Courts of Appeal in relation to the Agreement.

21.2 A failure by the Contractor to enforce any term of the Agreement shall not be construed as a waiver of any of the Contractor's rights hereunder. Any such waiver will only be valid if made in writing.

21.3 The Customer warrants that it has made its own enquiries to verify information, specifications or representations provided to it by the Contractor and to assess the suitability of the Works before the Works commence. The Customer warrants that it has not entered into the Agreement in reliance on any representations except for those written representations contained in the Agreement.

21.4 The Customer may not assign or transfer any of its rights or obligations under the Agreement to any person without the prior written consent of the Contractor.

21.5 Unless specifically described as GST inclusive, any quote or invoice provided by the Contractor to any Customer does not include any amount on account of GST.

21.6 If any part of the Agreement is unenforceable, the unenforceable provisions must be read down so as to be enforceable or, if it cannot be so read down, the provision must be severed from the Agreement without affecting the enforceability of the remaining Agreement.

21.7 The Contractor may vary the Agreement from time to time with immediate effect by publishing new Terms on the Contractor's website at www.metrocivil.com.au or by providing a copy of the new Terms to the Customer.

21.8 Metro Civil (Vic) Pty Ltd Terms and Conditions supersedes any other.

A copy of these Terms is available on request from the Contractor or on the Contractor's website at www.metrocivil.com.au