

Mr Drains - Terms & Conditions of Trade

1. Definitions

- 1.1 "Mr Drains" means Partners In Plumbing Pty Ltd T/A Mr Drains, its successors and assigns or any person acting on behalf of and with the authority of Partners In Plumbing Pty Ltd T/A Mr Drains.
- 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally (where the context so permits, the term 'Client' shall also mean the Client's duly authorised representative).
- 1.3 "Works" means all Works or Materials supplied by Mr Drains to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Works as agreed between Mr Drains and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Mr Drains.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000, or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Where the Client is a tenant (and therefore not the owner of the land/premises where the Works are to be undertaken), the Client warrants that full consent has been obtained from the owner for Mr Drains to carry out the Works. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Works provided under this agreement and to indemnify Mr Drains against any claim made by the owner of the land/premises (howsoever arising) in relation to the provision of the Works by Mr Drains; except where such claim has arisen because of the negligence of Mr Drains.
- 2.5 The Client agrees that they shall upon request from Mr Drains provide evidence that:
- they are the owner of the land/premises upon which the Works are to be undertaken; or
 - where they are a tenant, that they have the consent of the owner for the Works to be undertaken.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Mr Drains as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies Mr Drains in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise Mr Drains in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Mr Drains for all additional costs incurred by Mr Drains (including Mr Drains' profit margin) in providing any Works, Materials or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give Mr Drains not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Mr Drains as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At Mr Drains' sole discretion the Price shall be either:
- as indicated on invoices provided by Mr Drains to the Client in respect of Works performed or Materials supplied; or
 - Mr Drains' quoted Price (subject to clause 5.2) which shall be binding upon Mr Drains provided that the Client shall accept Mr Drains' quotation in writing within thirty (30) days.
- 5.2 Mr Drains reserves the right to change the Price:
- if a variation to the Materials which are to be supplied is requested;
 - if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested;
 - where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work (including pest infestation, etc.), health hazards and safety considerations (such as the discovery of asbestos), prerequisite work by any third party not being completed substantially or at all, hard rock barriers below the surface, etc.) which are only discovered on commencement of the Works;
 - in the event of increases to Mr Drains in the cost of labour or materials which are beyond Mr Drains control;
 - where unforeseen circumstances occur (including but not limited to variations in shipping and courier costs).
- 5.3 At Mr Drains' sole discretion a deposit may be required.
- 5.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Mr Drains, which may be:
- on completion of the Works/delivery of the Materials;
 - by way of progress payments in accordance with Mr Drains specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed;
 - thirty (30) days following the end of the month in which a statement is delivered to the Client's address for notices;
 - the date specified on any invoice or other form as being the date for payment;
 - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Mr Drains.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply) or by any other method as agreed to between the Client and Mr Drains.
- 5.6 No allowance has been included within the quotation for Works to be carried out outside of Mr Drains' normal working hours.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Mr Drains nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Mr Drains an amount equal to any GST Mr Drains must pay for any supply by Mr Drains under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.

6. Delivery of the Works

- 6.1 At Mr Drains' sole discretion, any delivery costs shall be included in the Price.
- 6.2 Subject to clause 6.3 it is Mr Drains' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.3 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Mr Drains claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Mr Drains' control, including but not limited to:
- (a) any failure by the Client to:
 - (i) make a selection; or
 - (ii) have the site ready for the Works;
 - (iii) notify Mr Drains that the site is ready.
 - (b) any act of God, war, terrorism, strike, lock-out, industrial action/disturbance, fire, flood, storm, orders of any Governmental authority, laws, regulation; any action or inaction by any third party or any other event beyond the reasonable control of Mr Drains.
- 6.4 Mr Drains may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 The Client must take delivery by receipt or collection of the Materials whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Materials as arranged then Mr Drains shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.6 Any time or date given by Mr Drains to the Client is an estimate only. Mr Drains shall not be liable for any loss or damage whatsoever due to failure by Mr Drains to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Mr Drains. In the event that Mr Drains is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Mr Drains shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7. Risk

- 7.1 If Mr Drains retains ownership of the Materials under clause 12 then:
- (a) where Mr Drains is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at Mr Drains' address; or
 - (ii) the Materials are delivered by Mr Drains or Mr Drains' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Mr Drains is to both supply and install Materials then Mr Drains shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 If the Client specifically requests Mr Drains to leave Materials outside Mr Drains' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 The Client warrants that any structures in which the Works are to be undertaken/Materials are to be affixed are able to withstand the installation of the Materials. If, for any reason Mr Drains reasonably forms the opinion that the Client's property is not safe for the Works to proceed, then Mr Drains shall be entitled to delay Works (in accordance with the provisions of clause 6.3) until Mr Drains is satisfied that it is safe to proceed. Mr Drains may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 7.4 Where Mr Drains requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply Mr Drains a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 7.5 Mr Drains shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against Mr Drains' recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to Mr Drains. Accordingly, Mr Drains offers no warranty in regards to the aforementioned.
- 7.6 Notwithstanding the provisions of clause 7.1, where Mr Drains requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the Site, the Client shall supply Mr Drains a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 7.7 Mr Drains is only responsible for Materials that are replaced by Mr Drains, and Mr Drains does not at any stage accept any liability in respect of previous works and/or materials supplied by any other third party that subsequently fail and are found to be the source of the failure.
- 7.8 Where the Client has supplied materials for Mr Drains to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials.
- 7.9 Where Mr Drains gives advice or recommendations to the Client regarding the suitability of the worksite for the provision of the Works and/or Materials, and such advice or recommendations are not acted upon, then Mr Drains shall require the Client to authorise commencement of the Works in writing. Mr Drains shall not be liable in any way whatsoever for any damage and/or loss which occurs after any subsequent commencement of the Works.
- 7.10 Mr Drains shall not be liable for any defect in the Works if the Client does not follow Mr Drains' and/or the manufacture's recommendations.
- 7.11 Prior to commencement of any Works Mr Drains shall carry a routine soundness test of the site to ensure that there is no gas leaks in the existing pipework. In the event of such a discovery Mr Drains where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.
- 7.12 The Client acknowledges that in instances where the gas supply is turned off at the meter or bottles by Mr Drains in order to carry out the soundness test, that parts within a gas appliance may 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. Any costs associated with such an event shall be borne by the Client.
- 7.13 The presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Mr Drains is requested to merely clear such blockages, Mr Drains can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Mr Drains will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work;
- 7.14 **Adjacent Piping Risk:** Mr Drains will use its best endeavours to identify which sections of drain piping are causing the blockages and will quote on lining of such sections to rectify the problem. However, because tree roots can penetrate adjacent drains/junction lines at any time subsequent to

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completion of the subject Works, should new blockages emerge in such unlined sections, Mr Drains accepts no liability in this respect and the Client shall indemnify Mr Drains against all consequential loss, damage and/or costs associated with remedying the foregoing.

7.15 **Piping joints:** Tree roots can penetrate piping joints which have been lined by Mr Drains subsequent to the Works being carried out. Should such blockages emerge at the point where the lining ends due to such root growing between the original drain piping and the new lining then Mr Drains accepts no liability in this respect and the Client shall indemnify Mr Drains against all consequential loss, damage and/or costs associated with remedying the foregoing.

7.16 **Rubber Pip Couplings:** Over time, tree roots can penetrate between rubber couplings and drain pipe resulting in new blockages subsequent to the Works. Therefore, when rubber couplings are specified in the scope of the Works, Mr Drains accepts no liability in this respect and the Client shall indemnify Mr Drains against all consequential loss, damage and/or costs associated with remedying the foregoing.

7.17 **Connection to Mains Sewer Lines:** Mr Drains is not permitted to line any section of works installed by any government authority or Sydney Water. Due to the level of difficulty, Mr Drains cannot guarantee to terminate lining at the exact connection point of the Client's drains to such main sewer lines. Should tree roots penetrate Client junction lines located before end of lining and result in blockages subsequent to completion of the Works, Mr Drains accepts no liability in this respect and the Client shall indemnify Mr Drains against all consequential loss, damage and/or costs associated with remedying the foregoing.

7.18 In the event that Mr Drains' drain/pipe unblocking equipment becomes lodged or stuck whilst cleaning any blockages in the line and/or is damaged on the Client's premises, the Client is responsible for the cost of repair, replacement and/or retrieval of said equipment.

8. Client Acknowledgements & Responsibilities

8.1 Mr Drains shall be entitled to rely on the accuracy of any plans, specifications, dimensions and/or any other information provided (in relation to the Works) by the Client or any third party employed or contracted by the Client. The Client acknowledges and agrees that in the event that any of that information provided by the Client is inaccurate, Mr Drains accepts no responsibility for any loss, damage, or costs howsoever resulting from these inaccurate plans, specifications, dimension or other information.

8.2 The Client acknowledges and accepts that:

- (a) the installation of some appliances can cause water hammer or damage to existing pipe work. The Client agrees to indemnify Mr Drains against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials;
- (b) they shall provide and erect scaffolding to enable the Works to be undertaken (where in Mr Drains' opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed;
- (c) they are responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable Mr Drains to carry out the Works;
- (d) in the event asbestos or any other toxic substances are discovered at the site that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Mr Drains against any costs incurred by Mr Drains as a consequence of such discovery. Under no circumstances will Mr Drains handle removal of asbestos product
- (e) the Client shall be responsible for ensuring that the Works/Materials ordered are suitable for their intended use;
- (f) they shall not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party.

8.3 The Client further acknowledges that:

- (a) they shall remove any furniture or personal items from the vicinity of the Works, and agrees that Mr Drains shall not be liable for any damage caused to those items through the Clients failure to comply with this clause;
- (b) they are wholly responsible for animals and/or children on the worksite;
- (c) they are wholly responsible for the removal of rubbish from or clean-up of the worksite;
- (d) they shall supply electricity, temporary lighting, toilet, eating and first aid facilities if so required;
- (e) Mr Drains shall not be liable for any costs or loss or damage to the Works (or any part thereof) howsoever arising where the Client has failed to comply with this clause 8.

9. Access

9.1 The Client shall ensure that Mr Drains has clear and free access to the worksite at all times to enable the Works to be undertaken. Mr Drains shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, concreted or paved areas or gardens, landscaping or other grassed areas) unless due to the negligence of Mr Drains.

9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Mr Drains.

9.3 The Client agrees to be present at the worksite when and as reasonably requested by Mr Drains and its employees, contractors and/or agents.

10. Dial Before You Dig

10.1 Location of underground services by a licensed service locator is mandatory prior to commencement of any works. "Dial Before You Dig" must be consulted and any potential underground services marked on site. Whilst Mr Drains will take all care to avoid damage to any underground services the Client agrees to indemnify Mr Drains 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. If either party, or both parties, request the services of a service locator then this shall be in addition to the Price.

11. Compliance with Laws

11.1 The Client and Mr Drains shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works/Materials.

11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

11.4 The Client warrants that any existing plumbing, gas-fitting and/or associated services at the worksite that is subject to the Works and/or Materials under this contract is fully compliant with current regulations. Mr Drains reserves the right to halt all Works if, in their opinion the worksite and/or the positioning of a unit, pipes etc. is in any way less than fully compliant. The Client will be informed of this and shall be provided with a revised quotation/estimate to reflect the Works that are required to bring the worksite and/or Materials up to fully compliant current standards. Should the Client not wish to proceed, Mr Drains will charge a standard fee for the time spent on worksite based on Mr Drains' prior quotation.

- 12. Title**
- 12.1 Mr Drains and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Mr Drains all amounts owing to Mr Drains; and
 - (b) the Client has met all of its other obligations to Mr Drains.
- 12.2 Receipt by Mr Drains 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.
- 12.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Mr Drains on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Mr Drains and must pay to Mr Drains the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by Mr Drains shall be sufficient evidence of Mr Drains' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Mr Drains to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Mr Drains and must pay or deliver the proceeds to Mr Drains on demand.
 - (e) the Client should not convert or process the Materials or intermix them with other materials but if the Client does so then the Client holds the resulting product on trust for the benefit of Mr Drains and must sell, dispose of or return the resulting product to Mr Drains as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Mr Drains to enter any premises where Mr Drains believes the Materials are kept and recover possession of the Materials.
 - (g) Mr Drains may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Mr Drains.
 - (i) Mr Drains may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client 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 Materials and/or collateral (account) – being a monetary obligation of the Client to Mr Drains for Works – that have previously been supplied and that will be supplied in the future by Mr Drains to the Client.
- 13.3 The Client 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 Mr Drains may reasonably require to:
 - (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 13.2(a)(i) or 13.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, Mr Drains 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 Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Mr Drains;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Mr Drains;
 - (e) immediately advise Mr Drains of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.4 Mr Drains and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Mr Drains, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client shall unconditionally ratify any actions taken by Mr Drains under clauses 13.2 to 13.5.
- 13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of Mr Drains agreeing to supply the Materials, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies Mr Drains from and against all of Mr Drains' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Mr Drains' rights under this clause.
- 14.3 The Client irrevocably appoints Mr Drains and each director of Mr Drains as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Mr Drains in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Mr Drains to inspect the Materials or to review the Works provided.
- 15.2 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**).
- 15.3 Mr Drains acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Mr Drains makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Mr Drains' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Mr Drains' liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Mr Drains is required to replace any Materials under this clause or the CCA, but is unable to do so, Mr Drains may refund any money the Client has paid for the Materials.
- 15.7 If Mr Drains is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Mr Drains may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 15.8 If the Client is not a consumer within the meaning of the CCA, Mr Drains' liability for any defect or damage in the Materials is:
- limited to the value of any express warranty or warranty card provided to the Client by Mr Drains at Mr Drains' sole discretion;
 - limited to any warranty to which Mr Drains is entitled, if Mr Drains did not manufacture the Materials;
 - otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 15.1; and
 - Mr Drains has agreed that the Materials are defective; and
 - the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, Mr Drains shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Materials;
 - the Client using the Materials for any purpose other than that for which they were designed;
 - the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Client or any third party without Mr Drains' prior approval;
 - the Client failing to follow any instructions or guidelines provided by Mr Drains;
 - fair wear and tear, any accident, or act of God.
- 15.11 Mr Drains may in its absolute discretion accept non-defective Materials for return in which case Mr Drains may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.

16. Default and Consequences of Default

- 16.1 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 Mr Drains' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes Mr Drains any money the Client shall indemnify Mr Drains from and against all costs and disbursements incurred by Mr Drains in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Mr Drains' contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies Mr Drains may have under this contract, if a Client has made payment to Mr Drains by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Mr Drains under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 16.4 Without prejudice to any other remedies Mr Drains may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Mr Drains may suspend or terminate the supply of Works to the Client. Mr Drains will not be liable to the Client for any loss or damage the Client suffers because Mr Drains has exercised its rights under this clause.
- 16.5 Without prejudice to Mr Drains' other remedies at law Mr Drains shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Mr Drains shall, whether or not due for payment, become immediately payable if:
- any money payable to Mr Drains becomes overdue, or in Mr Drains' opinion the Client will be unable to make a payment when it falls due;
 - the Client becomes insolvent or bankrupt, 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Building and Construction Industry Security of Payments Act 1999

- 17.1 At Mr Drains' sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 17.2 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 1999 of New South Wales, except to the extent permitted by the Act where applicable.

18. Dispute Resolution

- 18.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. 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 by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

19. Cancellation

- 19.1 Mr Drains may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Mr Drains shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Mr Drains for Works already performed. Mr Drains shall not be liable for any loss or damage whatsoever arising from such cancellation.

Mr Drains - Terms & Conditions of Trade

- 19.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Mr Drains as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 20. Privacy Act 1988**
- 20.1 The Client agrees for Mr Drains to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Mr Drains.
- 20.2 The Client agrees that Mr Drains may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) 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/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 20.3 The Client consents to Mr Drains being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Client agrees that personal credit information provided may be used and retained by Mr Drains for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 20.5 Mr Drains may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) to allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.6 The information given to the CRB may include:
- (a) personal information as outlined in 20.1 above;
 - (b) name of the credit provider and that Mr Drains is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client'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 Client no longer has any overdue accounts and Mr Drains has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Mr Drains, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.7 The Client shall have the right to request (by e-mail) from Mr Drains:
- (a) a copy of the information about the Client retained by Mr Drains and the right to request that Mr Drains correct any incorrect information; and
 - (b) that Mr Drains does not disclose any personal information about the Client for the purpose of direct marketing.
- 20.8 Mr Drains will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 20.9 The Client can make a privacy complaint by contacting Mr Drains via e-mail. Mr Drains will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 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 New South Wales, the state in which Mr Drains has its principal place of business, and are subject to the jurisdiction of the Manly Courts in that state.
- 21.3 Subject to clause 15 Mr Drains shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Mr Drains of these terms and conditions (alternatively Mr Drains' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 21.4 Mr Drains may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. The Client cannot assign or sub-contract without the written approval of Mr Drains.
- 21.5 Mr Drains may elect to sub-contract all or any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of Mr Drains' sub-contractors without the authority of Mr Drains.
- 21.6 The Client agrees that Mr Drains may amend these terms and conditions at any time. If Mr Drains makes a change to these terms and conditions, then that change will take effect from the date on which Mr Drains notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Mr Drains to provide any Works to the Client.
- 21.7 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.
- 21.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so and they are not insolvent and that this agreement creates binding and valid legal obligations on them.