



## STANDARD TERMS AND CONDITIONS OF TRADE

All goods and services supplied by Howzat Plumbing Pty Ltd ATF Hiscock Family Trust are supplied subject to the following terms and conditions. The Customer has read, understood and agrees to be bound by these terms and conditions.

### 1. Definitions and Interpretation

“**Agreement**” means the agreement between the Supplier and the Customer constituted by these Terms and Conditions and the Quote.

“**BIF Act**” means *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

“**Consequential loss**” means indirect or consequential loss or damage, including but not limited to:

- (a) loss of revenue or profit;
- (b) loss of business or anticipated savings;
- (c) any loss arising from the inability to use the goods or services; or
- (d) the costs incurred because of the need to obtain substituted goods or services on a temporary or full-time basis.

“**Customer**” means the person or persons identified on the Quote.

“**Deposit**” means the deposit amount (if any) set out in the Quote.

“**Excepted Risk**” means:

- (a) any negligent act or omission of the Customer or its employees, contractors, agents or nominees;
- (b) any risk specifically excepted in the Agreement;
- (c) use or occupation of the Site by Customer or its employees, contractors, agents or nominees;
- (d) defective design of the Works prepared by parties other than the Supplier;
- (e) force majeure event.

“**Force Majeure**” means circumstances beyond reasonable control of the Supplier including, without limitation, acts of God, war, invasion, act of foreign enemies, hostilities, terrorism, rebellion, civil unrest, strikes, natural disaster, epidemics, power failures, loss or malfunction of utility, government action and directives, inability to obtain labour, material or transportation.

“**Goods and Services**” means the goods and services to be supplied to the Customer by or on behalf of the Supplier pursuant to the Agreement.

“**Latent Conditions**” means conditions on the Site and its surroundings, which differ significantly from the physical conditions which should reasonably have been anticipated by the Supplier at the time of the making of the Quote upon examination of all information regarding the Site provided by the Customer or third parties and inspection of the Site and its surroundings.

“**Practical Completion**” means the date upon which the Works is completed in accordance with the requirements of this Agreement, save minor omissions or minor defects.

“**Price**” means the total price or part thereof payable for the Goods and Services as adjusted by the Supplier in accordance with the Agreement.

“**Quote**” means a written description of the Goods and Services to be provided by or on behalf of the Supplier and the estimate of the total price payable for the Goods and Services.

“**Site**” means the location where the Goods and Services are provided by or on behalf the Supplier at the Customer’s request.

“**Supplier**” means Howzat Plumbing Pty Ltd ATF Hiscock Family Trust ABN 84 123 519 613.

“**Works**” the agreed scope for supply of the Goods and Services pursuant to the Quote and any variations agreed by the parties in accordance with the Agreement.

#### 1.1. Interpretation

Reference to:

- (a) The singular includes the plural and the plural includes the singular;
- (b) The use of any gender includes all genders;
- (c) A person includes a body corporate;
- (d) A person includes the person’s directors, agents, executors, administrators, successors and permitted assigns.

### 2. Quotations and Pricing

2.1. All rates and prices stated in the Quote are based on the information provided by the Customer. The Customer agrees and acknowledges that the quoted price may vary due to various factors including but not limited to lack of adequate access to the Site, latent conditions at the Site, increase in cost of supply of the Goods and Services to the Supplier, any delays caused by parties other than the Supplier or variations requested by the Customer.

2.2. Unless previously withdrawn, a Quote will be valid for 14 days after its issue date. The Customer must accept a Quote within fourteen (14) days of its issue date. The Supplier may extend this period at own discretion.

2.3. The Supplier may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise or withdraw the Quote at any time before acceptance of the Quote by the Customer.

2.4. The parties will be deemed to have formed an agreement upon the written communication by the Customer to the Supplier of the acceptance of the Quote and these Terms and Conditions.

2.5. A minimum charge for any work carried out by the Supplier for the Customer will apply equivalent to one (1) hour at the Supplier’s tradesman hourly rate as current from time to time and specified in the Quote.

2.6. Afterhours rates as current from time to time and specified in the Quote apply to any work carried out by the Supplier for the Customer after 4.00pm on weekdays, on weekends and public holidays applicable at the Site locale.

### 3. Terms of Payment

3.1. The Customer must pay to the Supplier:

- (a) if specified, the Deposit upon acceptance of the Quote; and
- (b) the total Price without deduction in clear funds upon practical completion of the Works.

3.2. Notwithstanding clause 3.1, where the Price for the Works exceeds \$3,300 inclusive of GST, the Supplier may request that the Price is paid by the Customer progressively within the period set out in the Quote or, if no period is stated, within 7 days after the issue of each payment claim by the Supplier.

3.3. Any payments made by credit card will incur a surcharge fee payable by the Customer at the rate specified in the tax invoice and is subject to change without notice.

3.4. The quoted Price includes GST, unless stated otherwise. If GST is imposed on any supply made under the Agreement, the Customer must pay to the Supplier, an amount equal to the GST payable on or for the taxable supply, subject to the Customer receiving (if required by law) a tax invoice in respect of the supply.

3.5. If any amounts payable under the Agreement remain unpaid after the due date:

- (a) The Supplier may, without prejudice to any other rights it may have, refuse to supply any further goods or services to the Customer or suspend the Works until overdue payment is received in full together with any amounts due under this clause 3.5.
- (b) Any late payments will incur a \$10 per month administration fee which will be added to the value of each outstanding tax invoice, and which will become due and payable by the Customer to the Supplier at the time of payment.
- (c) The Customer must pay to the Supplier on demand interest at the rate of 15% per annum on all overdue amounts owned by the Customer to the Supplier, calculated daily.
- (d) All costs and expenses associated with collecting overdue amounts under the Agreement, including but not limited to dishonour or other financial institution fees, legal fees and outlays, debt collector fees and costs and any internal costs and expenses of the Supplier are to be paid by the Customer on an indemnity basis as a debt due and payable under the Agreement.
- (e) Nothing in this Agreement shall prevent the parties from exercising their rights and obligations under the BIF Act.

### 4. Commencement and Completion of the Works

4.1. The Supplier will commence the Works on the date specified in the Quote or as otherwise agreed between the Customer and the Supplier, provided that the Customer gives the Supplier possession of sufficient of the Site to enable the Supplier to commence work.

4.2. The Customer may request an extension of the commencement of the Works with a minimum 2 business days written notice.

4.3. The Supplier shall execute the Works to practical completion by the date for practical completion, as specified in the Quote.

4.4. The Supplier may claim and is entitled to a reasonable extension of time of the date for practical completion if any of the following arise:

- (a) a variation agreed by the parties in accordance with clause 5 of the Agreement; or
  - (b) a delay caused by the Customer or its representatives; or
  - (c) a delay caused by a third party beyond the reasonable control of the Supplier;
  - (d) a delay in the delivery and/or availability of materials and labour beyond the reasonable control of the Supplier; or
  - (e) an inclement weather event.
- 4.5. If clause 4.4 applies, the Supplier may give to the Customer a notice in writing claiming an extension of time for practical completion with the number of days claimed and the reason for the delay.
- 4.6. The Customer must not unreasonably deny an extension of time requested by the Supplier under this clause.
- 4.7. Delay or failure by the Customer to agree to an extension of time does not cause the Date for Practical Completion to be set at large, but nothing in this clause shall prejudice any right of the Supplier to damages.
- 4.8. The Supplier's liability for failure to complete the Works on the Date for Practical Completion is limited to the value of the incomplete portion of the Goods and Services under the Agreement.
- 5. Variations**
- 5.1. A party to the Agreement may request a variation to the scope of Works as specified in the Quote.
- 5.2. The Supplier will not be bound to execute a variation unless it is approved by the Customer in writing pursuant to the Agreement and is within the general scope under the Quote and these Terms and Conditions.
- 5.3. If the Customer requests a variation, the Supplier will within reasonable time confirm to the Customer whether the variation can be effected and will submit for approval to the Customer a written variation document including change to the Price and the date for Practical Completion.
- 5.4. If the Supplier requests a variation, the Customer shall not unreasonably withhold approval of the proposed variation in writing.
- 6. Defects Liability**
- 6.1. If applicable, the defects liability period will start on the date of practical completion and will end on the date that is 6 months from the date of Practical Completion or as otherwise specified in the Quote, whichever date is earliest.
- 6.2. The Customer must notify the Supplier in writing by no later than 14 days before the end of the defects liability period of any defects or omissions in the Works.
- 6.3. The Supplier shall rectify any defects or omissions in the Works as soon as reasonably practicable after the date of practical completion within the defects liability period.
- 6.4. The Supplier may in its absolute discretion extend the defects liability period for the purposes only of completing any defects or omissions notified in accordance with clause 6.2 above.
- 7. Customer's Acknowledgments and Responsibilities**
- 7.1. The Customer will ensure that the Supplier has unobstructed and uninterrupted access to the Site at which the Works will be carried out for the duration of the Works.
- 7.2. The Customer will grant the Supplier possession of the Site or part thereof for the duration of the Works and allow the Supplier to make use of all existing services (such as water and electricity) in the performance of the Works.
- 7.3. The Customer acknowledges and agrees that any building or construction sites on which the Works are carried out will comply with all applicable occupational health and safety laws relating to building and construction sites and any other relevant safety standards or legislation.
- 7.4. The Supplier is not responsible for the removal of rubbish and clean-up of the Site where the Works are carried out.
- 7.5. Where the Customer supplies specifications, drawings or plans for the Works, the Customer agrees that the Supplier is not responsible to the extent permitted by law for the accuracy of such specifications, drawings or plans including but not limited to compliance with relevant safety standards or legislation and accuracy of measurements. The Customer agrees that he/she/it has not relied on any statement, representation or warranty made for or on behalf of the Supplier as to the fitness or suitability of the Goods or Services for any particular use and has relied on the Customer's own investigations and judgment in this regard.

- 7.6. Prior to commencement of Works the Supplier may request the Customer to obtain plans of underground pipes and cables on Site. Such plans must be provided at least 2 business days before commencement of any underground plumbing work on Site. If such plans are inaccurate or not provided pursuant to this clause, the Customer will indemnify the Supplier from any claim for loss or damage to any property including consequential loss.
- 7.7. The Customer acknowledges and agrees that if during the execution of the Works, the Supplier becomes aware of a Latent Condition, the Supplier will give notice to the Customer about the existence of such Latent Condition together with a proposed variation.
- 8. Warranties and Liabilities**
- 8.1. If loss or damage is caused by the Supplier (other than loss or damage which is a direct consequence of Excepted Risk) or omission on the part of the Supplier, the Supplier shall make good such loss or damage within the reasonable time.
- 8.2. To the extent permitted by law, our workmanship guarantee does not include goods, which are supplied subject only to the manufacturer's warranties, if any, and all other guarantees, conditions and warranties are excluded unless otherwise agreed in writing by the Supplier.
- 8.3. To the extent permitted by law, the Supplier's liability for any breach of a consumer guarantee under the Australian Consumer Law is limited to:
- (a) In the case of a supply of goods:
    - (i) the replacement of the goods or the supply of equivalent goods; or
    - (ii) the repair of the goods.
  - (b) In the case of Services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 8.4. The Supplier will not be liable for any consequential loss to the Customer as a result of the supply of the Goods and Services or as a result of any breach of the Agreement by the Supplier.
- 9. Retention of Title**
- 9.1. The Supplier and the Customer agree that the Supplier's ownership of the goods shall not pass to the Customer until:
- (a) the Customer paid the Supplier in clear funds all amounts owing for Goods and Services under the Agreement; and
  - (b) the Customer met all the obligations due by the Customer to the Supplier in respect of all contracts between them.
- 9.2. Until such time as ownership of the goods passes from the Supplier to the Customer, the Customer will:
- (a) hold the goods as fiduciary and agent for the Supplier,
  - (b) will not deal with the goods in any way inconsistent with the interests of the Supplier as owner except that the Customer may, in the ordinary course of business, sell the goods on behalf of the Supplier in which case it will account to the Supplier for the proceeds of sale which will be held in a separate account on trust for the Supplier.
- 10. Cancellation, Default and Termination**
- 10.1. If the Customer cancels a scheduled commencement of the Works with less than 1 business days' notice, the Customer agrees to pay a cancellation fee of \$135 incl GST to the Supplier.
- 10.2. If either party is in breach of the terms of the Agreement, the party not in breach may give the other party a written notice identifying and describing the breach and stating the intention to terminate the Agreement if the breach is not remedied within 10 business days from the giving of the notice.
- 10.3. If by the time specified in the notice under clause 10.2, a party fails to remedy the specified breach, a party may by notice in writing terminate the Agreement.
- 10.4. If the Agreement is terminated pursuant to this clause the Customer must pay the Supplier the reasonable value of any work properly carried out by the Supplier prior to that termination which has not been the subject of previous progress payment claim under the Agreement.
- 10.5. Nothing in the Agreement prevents the parties from terminating this Agreement by consent in writing.

**11. Dispute Resolution**

- 11.1. Until the Customer has complied with this clause, the Customer:
- (a) must not start court proceedings against the Supplier; and
  - (b) owes the Supplier a duty of confidentiality; and
  - (c) must not make any public statements in respect of the Supplier including online comments and reviews to enable both parties to engage positively towards resolving any dispute between them.
- 11.2. If a dispute arises between the Customer and the Supplier with respect to the Agreement, then either party may give a written notice of dispute to the other party.
- 11.3. Within 5 business days of receiving the notice in clause 11.2, the parties shall confer at least once to attempt to resolve the dispute and failing resolution of the dispute within 4 weeks of the notice, either party may refer such dispute to mediation.
- 11.4. Notwithstanding the existence of a dispute the parties must continue to perform the Agreement, subject to clause 10 of the Agreement.
- 11.5. This clause does not affect any obligations or rights of a party under the BIF Act.

**12. Intellectual Property**

The Supplier retains the intellectual property rights in any drawing, specification and other information supplied to the Customer for the purpose of this agreement and only grants to the Customer a limited, non-exclusive license to use such property as required for the performance of the agreement by the Supplier.

**13. Notices**

A notice under the Agreement must be in writing and shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Quote or last communicated in writing by that person to the person giving the notice. Any notice received after 5.00pm on a business day is deemed to have been received at 9:00am on the next business day at the place of service.

**14. Law and Jurisdiction**

This agreement is governed by and will be construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.