

# BKH Plumbing Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
  - 1.1 "Contractor" means BKH Plumbing Pty Ltd ATF The Havas Family Trust T/A BKH Plumbing, its successors and assigns or any person acting on behalf of and with the authority of BKH Plumbing Pty Ltd ATF The Havas Family Trust T/A BKH Plumbing.
  - 1.2 "Client" means the persons 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.
  - 1.3 "Works" means all Works or Materials supplied by the Contractor to the Client at the Client's request from time to time where the context so permits the terms "Works" or "Materials" shall interchangeably for the other.
  - 1.4 "Price" means the Price payable for the Works as agreed between the Contractor and the Client in accordance with clause 4 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 the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.
3. **Change in Control**
  - 3.1 The Client shall give the Contractor 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, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.
4. **Price and Payment**
  - 4.1 At the Contractor's sole discretion the Price shall be either:
    - (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
    - (b) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
  - 4.2 The Contractor reserves the right to change the Price:
    - (a) if a variation to the Materials which are to be supplied is requested; or
    - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
    - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
    - (d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
  - 4.3 The Contractor may submit a detailed payment claim at intervals not less than one week for work performed up to the end of each week. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.
  - 4.4 At the Contractor's sole discretion a non-refundable deposit may be required.
  - 4.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
    - (a) on completion of the Works; or
    - (b) by way of progress payments in accordance with the Contractor's 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; or
    - (c) the date specified on any invoice or other form as being the date for payment; or
    - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
  - 4.6 Payment may be made by cash, cheque, bank cheque, electronic-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Client and the Contractor.
  - 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor 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.
5. **Delivery of the Works**
  - 5.1 Delivery ("Delivery") of the Works is taken to occur at the time that:
    - (a) the Client or the Client's nominated carrier takes possession of the Works at the Contractor's address; or
    - (b) the Contractor (or the Contractor's nominated carrier) delivers the Works to the Client's nominated address even if the Client is not present at the address.
  - 5.2 At the Contractor's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
  - 5.3 The Client must take delivery by receipt or collection of the Works whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
  - 5.4 Subject to clause 5.5 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
  - 5.5 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
    - (a) make a selection; or
    - (b) have the site ready for the Works; or
    - (c) notify the Contractor that the site is ready.
  - 5.6 The Contractor 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.
  - 5.7 The Client shall take delivery of the Works tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
    - (a) such discrepancy in quantity shall not exceed five percent (5%); and
    - (b) the Price shall be adjusted pro rata to the discrepancy.
  - 5.8 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
  - 5.9 Any time or date given by the Contractor to the Client is an estimate only. The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Contractor.
6. **Risk**
  - 6.1 If the Contractor retains ownership of the Materials under clause 9 then:
    - (a) where the Contractor 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 the Contractor's address; or
      - (ii) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
    - (b) where the Contractor is to both supply and install Materials then the Contractor 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.
  - 6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's 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.
  - 6.3 The Client acknowledges and agrees that the presence of plant/rooftop growth and/or blockages generally indicates damaged pipes. Accordingly the Client agrees that these pipes cannot be fixed by simply removing plant/rooftop growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.
7. **Access**
  - 7.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and/or concrete or paved or grassed areas) unless due to the negligence of the Contractor.
8. **Underground Locations**
  - 8.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
  - 8.2 Whilst the Contractor takes all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 as per clause 8.1.
9. **Title**
  - 9.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:
    - (a) the Client has paid the Contractor all amounts owing to the Contractor, and
    - (b) the Client has met all of its other obligations to the Contractor.
  - 9.2 Receipt by the Contractor 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.
  - 9.3 It is further agreed that:
    - (a) until ownership of the Materials passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
    - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Client's loss, damage or destruction.
    - (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor 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 the Contractor and must pay or deliver the proceeds to the Contractor on demand.
    - (e) the Client should not convert or process the Materials or intermix them with other Works but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
    - (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
    - (g) the Contractor may remove 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 the Contractor.
    - (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
10. **Personal Property Securities Act 2009 ("PPSA")**
  - 10.1 In this clause, "document" means a charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
  - 10.2 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 that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
  - 10.3 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 the Contractor 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 10.3(a)(i) or 10.3(a)(ii);
    - (b) indemnify, and upon demand reimburse, the Contractor 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 the Contractor;
    - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Contractor; and
    - (e) immediately advise the Contractor 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.
  - 10.4 The Client and the Contractor agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
  - 10.5 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.
  - 10.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
  - 10.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
  - 10.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 10.3 to 10.6.
  - 10.9 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.
11. **Security and Charge**
  - 11.1 In consideration of the Contractor agreeing to supply the Materials, the Client charges all its rights 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).
  - 11.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements (including legal costs) on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
  - 11.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
12. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
  - 12.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any alleged defects in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.
    - 12.2 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).
    - 12.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
    - 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
  - 12.5 If the Client is, within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
  - 12.6 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.
  - 12.7 If the Contractor 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 the Contractor 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.
  - 12.8 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
    - (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
    - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
    - (c) otherwise negated absolutely.
  - 12.9 Subject to this clause 12, returns will only be accepted provided that:
    - (a) the Client has complied with the provisions of clause 12.1; and
    - (b) the Contractor has agreed that the Materials are defective; and
    - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
    - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
  - 12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
    - (a) the Client failing to properly maintain or store any Materials;
    - (b) the Client using the Materials for any purpose other than that for which they were designed;
    - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
    - (d) interference with the Works by the Client or any third party without the Contractor's prior approval;
    - (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
    - (f) fire war and tear, any accident, or act of God.
  - 12.11 The Contractor may in its absolute discretion accept non-defective Materials for return in which the Contractor may require the Client to pay handling fees of up to twenty five percent (25%) of the value of the returned Materials plus any freight costs.
  - 12.12 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.
13. **Default and Consequences of Default**
  - 13.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - 13.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
  - 13.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Client has exercised its rights under this clause.
  - 13.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
    - (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
    - (b) 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
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
14. **Compliance with Laws**
  - 14.1 The Client and the Contractor 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.
  - 14.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
  - 14.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
15. **Cancellation**
  - 15.1 The Contractor 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 the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
  - 15.2 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 the Contractor as a direct result of the Works being cancelled (including, but not limited to, any loss of profits).
  - 15.3 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
16. **Privacy Act 1988**
  - 16.1 The Client agrees for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Contractor.
  - 16.2 The Client agrees that the Contractor may exchange information about the Client with third credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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.
  - 16.3 The Client understands that the information exchanged can include anything that credit providers are allowed to exchange under the Privacy Act 1988.
  - 16.4 The Client consents to the Contractor being given a consumer credit report to collect credit information for the purposes of the Privacy Act 1988.
  - 16.5 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Client and Contractor or required by law from time to time):
    - (a) the provision of Works; and/or
    - (b) the marketing of Works by the Contractor; its agents or distributors; and/or
    - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
    - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
    - (e) enabling the timely creation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
  - 16.6 The Contractor may give information about the Client to a credit reporting agency for the following purposes:
    - (a) to obtain a consumer credit report about the Client;
    - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client;
    - (c) advise that the Contractor is a current credit provider to the Client;
    - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
    - (e) where the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
    - (f) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
    - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
    - (h) that credit provided to the Client by the Contractor has been paid or otherwise discharged.
17. **Unpaid Seller's Rights**
  - 17.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any moneys owing to it by the Client, the Contractor shall have, until all moneys owing to the Contractor are paid:
    - (a) a lien on the item; and
    - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Works.
  - 17.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Contractor having been obtained against the Client.
18. **Building and Construction Industry Payments Act 2004**
  - 18.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
  - 18.2 Nothing in this clause is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
19. **General**
  - 19.1 Where the Client is the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor'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 impacted.
  - 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in that state.
  - 19.3 Subject to clause 12 the Contractor 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 the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
  - 19.4 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 the Contractor nor to withhold payment of any invoice because of any such set off or deduction.
  - 19.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
  - 19.6 The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide any Works to the Client.
  - 19.7 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.
  - 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.