

## TERMS AND CONDITIONS OF BUSINESS

### 1. Introduction

**1.1 Terms** – These terms apply to the Services you have engaged us to provide under the Quote. These terms together with the Quote form the entire Agreement between you and us. If anything in these terms is inconsistent with the Quote, these terms take precedence, unless the Quote specifically amends any of them.

**1.2 Commencement** – The Agreement will start on the earlier of (i) the date set out in the Quote; or (ii) the commencement of the Services.

### 2 Services

**2.1 Services** – We will perform the Services with reasonable skill and care. You confirm that the scope set out in the Quote is sufficient for your purpose.

**2.2 Site and access** – The Quote is based on free and unrestricted access to all required work areas within the Site. We will use reasonable endeavours to leave the Site in a clean manner. We are not responsible for the cleanliness of any other contractor.

**2.3 Regulations** – All Services will comply with applicable building laws or regulations in force at the time the Services are rendered. You are responsible for the health and safety of the Site unless otherwise set out in any building law or regulation.

**2.4 Changes** – Either we or you may request a change to the Services. A material change will be effective only when agreed in writing, including any variation to the fees.

**2.5 Exclusions** – The following are excluded from the Services unless otherwise set out in the Quote; (i) clearing and/or moving of furniture and other items blocking access to work areas, (ii) builders or electrical work (creating of holes larger than 50mm diameter, creating of support structures, movement or installation of any wiring etc), (ii) re-decoration and final making good, and (iv) removal and disposal of rubble, old fittings, materials and general waste.

**2.6 Completion** – Any date or time quoted for delivery and completion of the Services is an estimate. We will endeavour to complete the Services in the time required by you. We will not be liable for any delay or failure to deliver the Service or Materials as a result of any matter outside our control, or any loss or damage you may suffer as a result.

**2.7 Existing fittings** – No warranty is provided for any existing fixtures, fittings, pipes, wiring, structures or

systems (“existing fittings”). You understand that our services may not be compatible with the existing fittings and extra costs may be payable to either bring the existing fittings to code, or replace them entirely. You agree not to bring a claim against us for any loss arising out of the existing fittings or their subsequent repair.

**2.8 Ground exclusions** – Where excavation of soil is required, the Quote is based on clean soil only. Any rock or shale excavation, tree root removal or supportive work is excluded from the Quote, unless otherwise stated. Where any flooring coverings, concrete, paving or landscaping require lifting, we will use reasonable endeavours to avoid damage and to refit them to an acceptable standard. You should consider engaging a specialist so to ensure a fully satisfactory reinstatement.

**2.9 Tree roots** - You agree that the presence of plant or tree root growth may cause damaged or blocked pipes. No warranty is provided in relation to any future blockages if the plant has not been removed once the damaged pipes have been repaired.

**2.10 CCTV** - Unless stated in the Quote, the use of Closed Circuit Television (CCTV) to identify the source of a blocked drain is not included. Additional charges may apply if we deem it necessary to use CCTV.

**2.11 Leaks** - You agree that repairing leaks is a process of elimination. We will not be held liable for any continuing leaks. Multiple testing may be required to find the source of the leak and we will attempt to rectify all leaks within an appropriate time.

### 3 Your responsibilities

**3.1 Your obligations** – In order for us to perform the Services, you must ensure that the Services (i) can be completed without interruption, (ii) in a continuous manner, (iii) on the agreed dates and (iv) amenities, water and power freely available. You are responsible to ensure that any other necessary building or plumbing works or electrical installations not specified in the Quote are completed prior to the Services commencing.

**3.2 Insurance** – You are responsible for ensuring the Site is adequately insured for the duration of the Services.

**3.3 Health and safety** – You are responsible for compliance with all occupational health and safety laws relating to Site and any other relevant safety standards or legislation. You will inform us of (i) all general and specific safety requirements as and when they arise, in relation to the Site; and (ii) any incident or potential hazard that may cause harm to us or our employees.

**3.4 Hazardous materials** - Unless specifically stated in the Quote, the price is based on the assumption that the Site will be free of any hazardous material. You accept full responsibility for the removal of any hazardous material and the resolution of any problems or for delays and additional costs which may result from the presence of hazardous materials in or about the Site.

**3.5 Failure to perform** – Our performance depends on you performing your obligations under the Agreement. We reserve the right to charge any additional costs incurred by us as a result of you failing to perform your obligations. We are not liable for any loss arising from you not fulfilling your obligations.

## 4 Price

**4.1 Payment for Services** – You will make payment for all Services and Materials in accordance with the Quote.

**4.2 Invoices and payment** – Unless otherwise provided in the Quote all invoices are payable within 7 calendar days of the date of the invoice. If you do not pay an invoice on time we may charge you interest at the rate set by law. You will also indemnify us for any costs incurred by us in relation to any non-payment by you.

**4.3 Quote** – Our Quote is valid for 7 days. If you do not accept the Quote within 7 days, no agreement is formed between us. We reserve the right to increase the price of any Materials at any time if we are subject to a price increase from the supplier.

**4.4 Taxes** – All prices are exclusive of GST unless otherwise stated in the Quote. You will also pay any taxes, including GST, that are due in relation to the Services and Materials. You will pay us the full amount of any invoice, without set off, regardless of any deduction that you are required by law to make.

**4.5 Additional hours** - Unless stated otherwise, the Quote assumes standard working hours between the hours of 7am – 5pm Monday to Friday. Services required outside these hours may attract out of hours premium rates. Any additional work not covered in the Quote will be charged at our standard hourly rates plus any additional materials cost.

## 5 Materials

**5.1 Materials** – We will take all due and reasonable care when delivering and installing the Materials. Subject to our warranties and any law or regulation to the contrary, we will not be liable for any loss or damage to the Site caused

by faulty Materials. All third-party supplier warranties for the Materials will be passed on to you.

**5.2 Risk** – The risk in all Materials supplied shall pass to you upon delivery. You will not open, dismantle or otherwise handle any Materials unless directed by us. You will be responsible for any loss or damage to the Materials once they have been delivered to Site.

**5.3 Title** – All Materials supplied shall remain our property until all fees have been paid in full.

**5.4 Substitution** – If any Materials specified within the Quote are unavailable at the time of the Services being performed, we in our absolute discretion may substitute a reasonable alternative.

## 6 Warranties

**6.1 Warranty** – We warrant that the Services will be defect free for a period of 12 months from the date of completion. If a defect is reported to us within the warranty period, then we will either replace or repair the defect, subject to clause 6.2.

**6.2 Exclusions** – The warranty does not extend to goods not supplied by us, physical damage to the Materials or Site, fair wear and tear, or any instance where our Services have subsequently been altered or tampered with by you or a third party.

## 7 Liability

**7.1 Specific types of loss** – You agree that we will not be liable for (i) loss or damage to the Site, (ii) loss of profit, goodwill, business opportunity, anticipated savings or benefits or (iii) indirect or consequential loss.

**7.2 Our liability** – You agree that we will be liable only when we are at fault for our actions or omissions. Our total liability for all claims connected with the Services, the Agreement or any indemnity (including but not limited to negligence) is limited to the fees payable (excluding GST) under the Agreement.

**7.3 Unlimited liability** – Nothing in the Agreement will limit a person's liability for: (a) death or personal injury caused by that person's negligence; (b) that person's fraud; or (c) anything else that cannot be limited by law.

**7.4 Third party suppliers** – We may use suppliers or subcontractors to provide the Services. We remain solely responsible for the Services.

**7.5 Indemnity** – You indemnify us and our directors and employees against all losses we may suffer which arise

from damage or injury to (i) the Site, or (ii) any of our property left at the Site, (iii) any of our personnel at the Site, or (iv) as the result of your breach of this Agreement.

## 8 Termination

**8.1 Immediate notice** – Either we or you may end the Agreement immediately by giving written notice to the other if (i) the other materially breaches it and does not remedy the breach within 5 business days upon receipt of a notice, (ii) the other is or appears likely to be unable to pay its debts or becomes insolvent or (iii) the performance of the Agreement may breach a legal or regulatory requirement.

**8.2 7 days' notice** – Either we or you may end the Agreement on 7 calendar days' written notice. We reserve the right to charge a cancellation fee for any cancellation with less than 7 days notice.

**8.3 Fees payable on termination** – You agree to pay us for all Services we perform up to the date of termination including any Materials already acquired by us. Any fees payable in advance will be non-refundable.

## 9 Dispute resolution

**9.1 Mediation** – If a dispute arises, the parties will attempt to resolve it by mediation before commencing legal proceedings.

**9.2 Law and jurisdiction** – This Agreement shall be governed and construed by the laws of Victoria, Australia. Both parties irrevocably submit to the exclusive jurisdiction of Victoria.

## 10 General

**10.1 Force majeure** – No party will be liable to another if it fails to meet its obligations due to matters beyond its reasonable control, including but not limited to an act of God, strike or pandemic.

**10.2 Entire agreement** – The Agreement forms the entire agreement between the parties in relation to the Services. It replaces any earlier agreements, representations or discussions.

**10.4 Assignment** – We may assign this agreement to a third party upon reasonable notice to you.

**10.5 Compliance with Law** – Both you and we will comply with all applicable laws and regulations relevant to the receipt of the Services.

**10.6 Severability** - Any provision of this Agreement which is void, illegal or otherwise unenforceable will be severed

to the extent permitted by law without affecting any other provision of this Agreement.

**10.7 Waiver** - The failure or omission of a party at any time to enforce or require compliance with any provision of this Agreement or exercise any right, election or discretion under this Agreement shall not operate as a waiver of that right, election or discretion.

**10.8 Survival** - The provisions of the Agreement which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind each of the parties including, but not limited to, 2, 4, 5, 6, 7, 8, 9.3, 10 and 11.

## 11 Interpretation

In this Agreement the following words and expressions have the meanings given to them below:

**Agreement** – these terms, any agreed service specific terms and the Quote to which they relate;

**GST** – (a) GST has the same meaning as in the GST Law; (b) GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Materials** – any good or products required to complete the Services;

**Quote** - Our offer to perform the Services for you, which is attached to this Agreement;

**Services** – the services rendered, works performed and Materials delivered as set out in the Quote;

**Site** – the premises where the Services are to be rendered as set out in the Quote.

**we, us or our** – refers to Ace Plumbing Solutions Co Pty Ltd ABN 93 683 767 893

**you, your** – the party or parties to this Agreement (excluding us)