

# Duncan's Plumbing & Gas – Terms & Conditions of Trade

1.	<b>Definitions</b>	take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.	9.7	The Customer acknowledges and accepts that:
1.1	<b>"Acknowledgment Document"</b> means the document signed by the Customer in conjunction with these Terms and Conditions of Trade and applicable if the Contractor elects, whereby the Customer acknowledges the extent and effect of the provision of security the Customer provides to the Contractor in consideration of the provision of Materials or Works.			(a) choked drains generally indicate the pipelines are not fully efficient (i.e. blockages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Blockages also occur due to disposal of sanitary hygiene products and foreign objects in sewer lines. Once cleared, the Contractor cannot give any guarantee against recurrence or further damage. In the event that the Customer requests the Contractor to use drainpipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and the Contractor does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Contractor may require the Customer or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
1.2	<b>"Confidential Information"</b> means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.	7.	<b>Price and Payment</b>	(b) where the Contractor has performed temporary repairs that the Contractor:
	<b>"Contract"</b> means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.	7.1	At the Contractor's sole discretion, the Price shall be either:	(i) offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
1.3	<b>"Contractor"</b> means Lauren Peters and Thomas Duncan ATF Duncan and Peters Family Trust T/A Duncan's Plumbing & Gas, its successors and assigns or any person acting on behalf of and with the authority of Lauren Peters and Thomas Duncan ATF Duncan and Peters Family Trust T/A Duncan's Plumbing & Gas.	7.2	(a) as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or upon placement if an order for the Materials;	(ii) will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
1.4	<b>"Cookies"</b> means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.		(b) the Contractor's quoted Price (subject to clause 7.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within thirty (30) days.	(c) the Contractor is only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
1.5	<b>"Customer"</b> means the person's, entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation; and:		The Contractor reserves the right to change the Price:	(d) under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite;
1.6	(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and		(a) if a variation to the Materials which are to be supplied is requested; or	(i) the Contractor shall suspend the Works;
	(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and		(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or	(ii) the Customer shall be fully responsible for the resolution of any resulting problems; and
	(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and	7.3	(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to the Worksite access and/or crawl spaces, obscured Worksites defects not visible at the time of inspection (including, but not limited to, existing leaks or moisture behind walls etc), prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Customer, hard rock or other barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or	(iii) any additional cost incurred by the Contractor shall be added to the Price under clause 7.2.
	(d) includes the Customer's executors, administrators, successors and permitted assigns.	7.4	(d) as a result of an increases in the cost of labour or Materials or the Contractor's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works or due to relevant industry awards (e.g. Worksite allowance and severance pay), which are outside the control of the Contractor.	(e) Materials supplied may:
1.7	<b>"GST"</b> means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).		Variances will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.	(i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Contractor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
1.8	<b>"Intended Use"</b> means an intended building product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.		Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:	(ii) expand, contract or distort as a result of exposure to heat, cold, weather;
1.9	<b>"Non-Conforming Building Product"</b> means associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works:		(a) on completion of the Works; or	(iii) mark or stain if exposed to certain substances;
	(a) the product is not, or will not be, safe; or	7.5	(b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment plans may include the reasonable value of authorised variations, and the value of any Materials delivered to the Worksite but not yet installed; or	(iv) create undesirable smells caused by a system as a result of its normal operation.
	(b) does not, or will not, comply with the relevant regulatory provisions; or		(c) the date specified on any invoice or other form as being the date for payment; or	
	(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.	7.6	(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.	
1.10	<b>"Price"</b> means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Customer in accordance with clause 7 below.		Payment may be made by electronic-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed between the Customer and the Contractor.	10. <b>Worksite Access and Condition</b>
1.11	<b>"Works"</b> means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).		The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as provides the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PSPSA) in the Materials.	10.1 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by the Contractor will be placed in a designated area appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.
1.12	<b>"Worksite"</b> means the address nominated by the Customer to which the Materials/Works are to be supplied by the Contractor.	7.7	The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Customer's account into default and subject to default interest in accordance with clause 18.1.	10.2 It is the intention of the Contractor and agreed by the Customer that:
2. <b>Acceptance</b>	The parties acknowledge and agree that:		Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this contract and the Customer for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.	(a) the Customer shall ensure that the Contractor has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Contractor shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor; and
2.1	(a) they have read and understood the terms and conditions contained in this Contract; and	7.8		(b) it is the Customer's responsibility to provide the Contractor, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Works.			10.3 Where the Contractor requires that Materials, tools etc. required for the Works be stored at the Worksite, the Customer shall supply the Contractor 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 Customer's responsibility.
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.			10.4 The Customer agrees to be present at the Worksite when and as reasonably requested by the Contractor and its employees, contractors and/or agents.
2.3	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.			10.5 <b>Worksite Inductions</b>
2.4	The Customer acknowledges and accepts that the supply of:			(a) in the event the Customer requires an employee or sub-contractor of the Contractor to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or
	(a) Works on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Works requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery; and	8. <b>Provision of the Works</b>	Subject to clause 8.2 if it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.	(b) where the Contractor is in control of the Worksite, the Customer and/or the Customer's third party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Contractor 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.
	(b) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not available for delivery, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 7.2. In all such cases the Contractor will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Works on hold, as per clause 8.2 until such time as the Contractor and the Customer agree to such changes.	8.1	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 Customer written notice) where completion is delayed by the Contractor or the Contractor's control, including but not limited to any failure by the Customer to:	10.6 The Customer acknowledges and agrees that it is the Customer's responsibility to ensure that a safety fence is erected around the perimeter of the Worksite to ensure public safety.
	(c) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not available for delivery, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 7.2. In all such cases the Contractor will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Works on hold, as per clause 8.2 until such time as the Contractor and the Customer agree to such changes.	8.2	(a) make a selection; or	11. <b>Underground Locations</b>
2.5	In the event that the Contractor is required to provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Customer.	8.3	(b) have the Worksite ready for the Works; or	11.1 Prior to the Contractor commencing the Works the Customer must advise the Contractor of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and services the Customer 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 the Worksite.
2.6	If the Contractor has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.	8.4	(c) notify the Contractor that the Worksite is ready.	11.2 Whilst the Contractor will take care to avoid damage to any underground services the Customer 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 11.1.
2.7	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	9. <b>Risk</b>	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.	12. <b>Compliance with Laws</b>
3. <b>Authorised Representatives</b>	The Customer acknowledges and accepts that the Contractor shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Customer to order any Materials, Works and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials, Works or variation/s requested thereto by the Customer duly authorised representative.	9.1	If the Contractor retains ownership of the Materials under clause 13 then:	12.1 The Customer 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, including any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
4. <b>Errors and Omissions</b>	The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):		(a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Contractor must ensure the Materials on or before delivery. The cost of delivery will be payable by the Customer in accordance with the quotation provided by the Contractor to the Customer, or as otherwise notified to the Customer prior to the placement of an order for the Materials. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Contractor's nominated delivery address (even if the Customer is not present at the address); and	12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
4.1	(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or		(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 Customer.	12.3 Both parties acknowledge and agree:
	(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.	9.2	Notwithstanding the provisions of clause 9.1 if the Customer specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location such materials shall always be left at sole risk of the Customer and it shall be the Customer'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 Customer's expense.	(a) to comply with the National Construction Code of Australia (NCC) and the Building Act 1993, in respect of all workmanship and building products to be supplied during the course of the Works; and
4.2	In circumstances where the Customer is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not) (" <b>Customer Error</b> "). The Customer must pay for all Materials it orders from the Contractor notwithstanding that such Materials suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Materials. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.	9.3	Any advice, recommendation, information, assistance or service provided by the Contractor in relation to the Materials or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Customer or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. Accordingly, the Contractor offers no warranty in regard to the aforementioned.	(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
5. <b>Change in Control</b>	The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practices). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.	9.4	The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however incurred by the Contractor or the Customer's employees or other information. The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or latent or unfavourable soil conditions such as liquefaction residue or risk) that the Contractor, or the Contractor's employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then the Contractor shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 8.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.	12.4 Where the Customer has supplied products for the Contractor to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products as per state regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 7.2.
5.1		9.5	The installation of some appliances can cause water hammer or damage to existing pipe work. The Customer agrees to indemnify the Contractor against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.	12.5 Prior to commencement of any Works the Contractor shall carry a routine soundness test of the Worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
6. <b>Credit Card Information</b>	The Contractor will:			12.6 The Customer acknowledges and accepts that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that gas taps within a given area 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 Customer.
6.1	(a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Contractor to complete the Works; and			12.7 The Customer warrants that any existing plumbing, gasfitting and/or associated services in or upon the Worksite that is subject to the Materials and/or Works are in compliance with regulations. The Contractor reserves the right to halt all Works (in accordance with the provisions of clause 8.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Contractor will charge a standard fee for the time spent on Worksite based on the Contractor's quotation.
6.2	(b) not disclose the Customer's credit card details to any third party; and			13. <b>Title</b>
	(c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 20) or where required by law.			13.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:
	(d) the Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due and outstanding by the Customer, the Contractor is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and	9.6		(a) the Customer has paid the Contractor all amounts owing to the Contractor; and
				(b) the Customer has met all of its other obligations to the Contractor.

# Duncan's Plumbing & Gas – Terms & Conditions of Trade

13.2	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.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																					
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