

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Unless the contrary intention appears, in this *Contract*:

- (a) words in the singular include the plural and vice versa as required by the context;
- (b) the word "person" includes an individual, a firm, a body corporate, an unincorporated body, a partnership, a joint venture or an association; and
- (c) italic type words and phrases used in the *General Conditions* are defined in Clause 2.

DEFINITIONS

Act - means the Building Act 1993;

Action - means any claim, notice, demand, proceeding or litigation brought in any Court or Tribunal;

Building Product - means any material or other thing associated with, or that could be associated with, a building;

Contract - means these *General Conditions*, the *Quotation* and any other documents listed Clause 20.1;

Contract Date - means the date on which this *Contract* is signed by both parties;

Contract Works - means the whole of the works to be carried out by the *Contractor* under this *Contract*, whether *Urgent Works*, *Emergency Works*, *Search and Investigation Works*, or *Other Works* but excludes those items of work listed in Clause 22.1;

Contractor - means Millbrook Plumbers Pty Ltd and includes its permitted assignees and transferees;

Contract Price - means the amount stated on the *Quotation* as the 'Contract Price', being the total amount payable under the *Contract* for the *Contract Works*, as adjusted under this *Contract*;

Customer - means the person or persons listed as the 'Customer' on the *Quotation* and includes the *Customer's* heirs, executors, administrators, permitted assignees and transferees and if more than one, each owner joint and severally;

Date for Commencement - means the date calculated by reference to Clause 6;

Date for Practical Completion - means the date by which the *Contract Works* are to reach *Practical Completion* pursuant to Clause 7;

Date of Commencement - means the first day which the *Contractor* actually commences work on the *Site*;

Date of Practical Completion - means that day that the *Contract Works* achieve *Practical Completion*;

Defects Document - means a document that:

- (a) lists the minor defects and minor omission in the *Contract Works* that the *Contractor* and the *Customer* agree exist;
- (b) states when the *Contractor* is to remedy the minor defects and minor omissions in (a);
- (c) lists the minor defects and minor omissions that the *Customer* claims exist and the *Contractor* does not agree exist; and
- (d) is signed by the *Contractor*;

Emergency Works - means works that are determined by the *Contractor* to be required to be carried out on an emergency basis by reason of their nature;

General Conditions - means these *General Conditions* to the *Contract*;

Latent Condition - means any physical condition on or around the *Site* the buildings or structures on the *Site* (including but not limited to surface, access, sub-surface conditions and concealed buildings elements) which differ materially from the physical conditions reasonably expected by the *Contractor* at the time the *Contract* was entered into;

Lending Body - means any person or entity which has agreed to provide finance to the *Customer* for payments of amounts to be paid by the *Customer* under this *Contract*;

Non-conforming Building Product - means a *Building Product* (a:) the association of the product with a building for the use:

- (i) is not, or will not be safe; or
- (ii) does not, or will not, comply with the relevant regulatory provisions; or
- (b) the product does not perform or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product;

Other Works - means any work, other than *Urgent Works* and *Emergency Works* which is to be carried out by the *Contractor* under this *Contract* (a description of which is contained in the *Quotation*) but excludes those items of work listed in Clause 22.1;

Practical Completion - means that stage when the *Contract Works* are complete in accordance with the *Contract* and all relevant statutory requirements, apart from minor omissions or minor defects the rectification or completion of which does not prevent the *Contract Works* from being used for the intended purpose;

Progress Claim - means a written claim for payment under Clause 7;

Quotation - means the *Contractor's* quote attached to this *Contract*;

Relevant Criteria - means having regard to generally accepted practices or standards applied in the building industry for the materials, or any specifications, instructions or recommendations of manufacturers or suppliers of the materials;

Search and Investigation Works - means any work involved in locating a plumbing problem and includes accessing roofs, under-spaces of buildings, locating gas leaks or location water leaks;

Site - means the 'Job Address' described on the *Quotation*;

Urgent Works - means works that the *Customer* has requested be undertaken on an urgent basis.

2. CONTRACTOR'S OBLIGATIONS

Obligations and warranties

2.1. The *Contractor* will carry out the *Contract Works*:

- (a) in an appropriate and skilful way and in a proper tradespersonlike manner;
- (b) with reasonable care and skill;
- (c) with reasonable diligence;
- (d) in accordance with the contract documents described at Clause 22.1; and
- (e) in accordance with all relevant laws and legal requirements including, for example, the Building Act 1993.

2.2. The *Contractor* shall, unless this *Contract* expressly provides otherwise, supply everything necessary for the performance of the *Contract Works*.

2.3. The *Contractor* warrants that materials supplied by the *Contractor* for use in the *Contract Works*:

- (a) will be good and, having regard to the *Relevant Criteria*, suitable for the purpose for which they are used; and
- (b) unless otherwise stated in this *Contract*, will be new.

2.4. The *Contractor* warrants that, if the *Contract Works* consist of:

- (a) the erection or construction of a detached dwelling to a stage suitable for occupation; or
- (b) the renovation, alteration, extension, improvement or repair of a home to a stage suitable for occupation, the dwelling or home will be suitable for occupation when the *Contract Works* are finished.

Approvals

2.5. Unless otherwise specified, the *Customer* shall obtain all permits, permissions, consents or approvals required for the *Contract Works* (if any).

Excess materials

2.6. Unless otherwise specified, all demolished and surplus materials are the property of the *Contractor*.

3. CUSTOMER'S OBLIGATIONS

Site possession and access

3.1. The *Customer* must:

- (a) give the *Contractor* free and uninterrupted access to the *Site* as necessary to enable the performance of the *Contract Works* by the *Date for Commencement*;
- (b) not obstruct, interfere with, or hinder the carrying out of the *Contract Works* and must take all reasonable steps to prevent all others from obstructing, interfering with or hindering the carrying out of the *Contract Works*, including the unauthorised removal of any material supplied by the *Contractor* necessary for the completion of the *Contract Works* from the *Site*;
- (c) allow the *Contractor* to use any power or water services on the *Site* during the performance of the *Contract Works*; and
- (d) where possible, remove all personal effects or other property likely to impede the *Contractor* in its performance of the *Contract Works* from that part of the *Site* where the *Contract Works* are to be performed;
- (e) ensure that the *Site* is safe and suitable for the *Contract Works* to be undertaken; and
- (f) unless agreed otherwise, remove all rubbish from the *Site* upon the *Contract Works* reaching *Practical Completion*.

3.2. If directed by the *Contractor*, the *Customer* is required to be present at the *Site* at all times while the *Contract Works* are being carried out.

3.3. If:

- (a) the *Customer* fails to comply with its obligations in Clause 3.1 of the *Contract*; or
- (b) the *Site* becomes inaccessible due to any reason beyond the control of the *Contractor*, the *Customer* is liable to the *Contractor* for any additional costs incurred by the *Contractor* in obtaining access to the *Site* or to overcome the issue including costs of any delay.

Warranties

3.4. The *Customer* warrants that it is authorised to occupy the *Site* and enter into this *Contract*.

3.5. The *Customer* warrants that the existing substrate or material to which any part of the *Contract Works* is to be affixed is

structurally sound and has been constructed in accordance with good building practices.

Customer-supplied documents and materials

3.6. If the *Customer* supplies:

(a) any documents to the *Contractor*, the *Customer*:

- (i) warrants that the documents or data are accurate and suitable for the purpose for which they are to be used;
- (ii) acknowledges that it is reasonable for the *Contractor* to rely on the documents or data;
- (iii) warrants that the documents or data does not infringe on a third party's copyright;
- (iv) indemnifies the *Contractor* against any loss or damages by reason of a breach of copyright or warranty; and
- (v) must supply sufficient number of copies to enable the *Contractor* to undertake the *Other Works*;

(b) any *Building Products* for incorporation into the *Other Works*, the *Customer*:

- (i) warrants that the *Building Product* supplied by the *Customer* is safe and suitable for its intended use;
- (ii) warrants that the *Building Product* is not a *Non-conforming Building Product* for its intended use; and
- (iii) will provide to the *Contractor* on request all required information for the *Building Product* relevant to the suitability and installation of the *Building Product*.

4. CALL OUT FEE

4.1. In requesting the *Contractor's* service, the *Customer* has agreed to pay the call-out fee in consideration of the *Contractor's* cost to dispatch a representative to the *Site* in relation to the *Contract Works*.

4.2. The *Customer* must pay the call-out fee:

- (a) by 11.59pm on the day on which a representative of the *Contractor* is dispatched to the *Site*; or
- (b) where the *Contractor's* representative is required to be dispatched to the *Site* outside the hours of 7.00am and 4.00pm Monday to Friday, or on a Saturday or Sunday, a public holiday in the local government area of the *Site*, or between 22 December and 14 January each year, prior to the dispatch of the *Contractor's* representative. (c) Notwithstanding clauses 4.2(a) and 4.2(b), if the *Customer* is anything other than a natural person the call-out fee must be paid prior to the dispatch of the *Contractor's* representative.

4.3. If:

- (a) the *Customer* pays the call-out fee within the time required by Clause 4.2;
- (b) the *Site* visit the subject of the call-out fee occurred not more than seven days prior to the *Contract Date*; and (c) the *Site* visit the subject of the call-out fee occurred between the hours of 7.00am and 4.00pm Monday to Friday and did not relate to *Urgent Works* or *Emergency Works*, the *Contract Price* will be reduced by the sum of the call-out fee paid by the *Customer* up to the value of \$55.00 plus GST.

5. TIMING OF THE WORKS

Urgent Works and/or Emergency Works

5.1. The *Contractor* will use its best endeavours to:

- (a) commence any *Urgent Works* and/or *Emergency Works* within twenty-four (24) hours of the *Contract Date* unless otherwise agreed in writing; and
- (b) complete any *Urgent Works* and/or *Emergency Works* within fourteen (14) days of the *Contract Date*.

Other Works

5.2. The *Contractor* must commence the *Other Works* by the later of:

- (a) the date being five (5) days after the *Contract Date*;
- (b) or the date being five (5) days after:
 - (i) the *Customer* has paid the deposit (if required);
 - (ii) the *Customer* has complied with its obligations under Clause 3.1;
 - (iii) if applicable, the *Customer* has provided evidence of its capacity to pay the *Contract Price*; and

- (iv) if applicable, the *Contractor* receives all approvals and consents (including finance approval) required to be obtained.

5.3. If the necessary approvals are not obtained within thirty (30) days of the *Contract Date*:

- (a) through no fault of the parties, either party may bring this *Contract* to an end by giving written notice to the other party; or
- (b) through the *Customer's* fault, the *Contractor* may either terminate this *Contract* in accordance with Clause 12, or extend the time for the *Customer* to obtain the necessary approvals.

5.4. If this *Contract* is brought to an end under Clause 5.3(b), the *Contractor* is entitled to a reasonable price for the work done up to and including the date the *Contract* ends, including its out-of-pocket expenses.

5.5. The *Contractor* shall complete the *Other Works* within fourteen (14) days of the *Contract Date*.

5.6. If the *Contract Price* is equal to or greater than \$20,000, the *Contractor* must within ten (10) *Business Days* of starting work on *Site*, give notice in writing to the *Customer* of the *Date of Commencement* and the *Date for Practical Completion*.

6. OBLIGATIONS UPON PRACTICAL COMPLETION

6.1. On reaching *Practical Completion*, the *Contractor* must give to the *Customer*:

- (a) the final *Progress Claim* for the balance of the *Contract Price* and any adjustments under this *Contract*;
- (b) a certificate stating the date the *Contract Works* have reached *Practical Completion*; and
- (c) if the *Customer* claims there are minor defects and minor omissions in the *Contract Works*, a *Defects Document*.

6.2. If the *Customer* does not agree that the *Contract Works* have achieved *Practical Completion*, the *Customer* must, within twenty-four (24) hours, give the *Contractor* a written notice stating:

- (a) the remaining works that the *Customer* considers necessary for the *Other Works* to reach *Practical Completion*; and
- (b) the provisions of this *Contract* that relate to each item of remaining work.

6.3. Upon receipt of the *Customer's* notice under Clause 6.2, the *Contractor* must complete those items of remaining works that the *Contractor* agrees are reasonably necessary for the *Contract Works* to reach *Practical Completion*.

6.4. On completion of works carried out by the *Contractor* under Clause 6.3, the *Contractor* must give the *Customer* a further final *Progress Claim* and a notice of *Practical Completion*.

6.5. The *Customer* must pay the final *Progress Claim* before taking possession of the *Contract Works* and before being entitled to receive any reports or documents (including manuals, warranties (other than Statutory) or instruction) applicable to the *Contract Works*.

6.6. If the *Customer* takes possession of the *Contract Works*, or any part of the *Contract Works*, when not entitled to do so under this *Contract*, the *Contract Works* are deemed to have been completed by the *Contractor* free of all defects and omissions and the *Customer* is liable to the *Contractor* to pay the final *Progress Claim* without deduction and any loss or damage arising as a result.

7. PAYMENT OF CONTRACT PRICE

7.1. The *Customer* shall pay to the *Contractor* the *Contract Price* in accordance with this *Contract*.

7.2. If the *Contractor* requires the *Customer* to pay a deposit, the *Customer* must pay the deposit to the *Contractor* by 5.00pm on the *Contract Date*.

7.3. Unless otherwise agreed in writing, the *Contractor* is entitled to claim payment of the *Contract Price* at any time, provided that the amount claimed in each *Progress Claim* is proportionate to the value of the *Contract Works* carried out by the *Contractor* on the *Site* at the date of the *Progress Claim*.

7.4. *Progress Claims* must:

(a) contain:

- (i) details of the work carried out and the value of that work;
- (ii) details of any adjustment to the *Contract Price* under this *Contract*; and
- (iii) details of any other amount due and payable by the *Customer* to the *Contractor* under this *Contract* or otherwise; and

(b) state the total amount that the *Contractor* claims for payment by the *Customer*.

General

7.5. The *Customer* must pay, or ensure that the *Lending Body* pays, to the *Contractor*, the total amount of a *Progress Claim* by 5.00pm on the date the *Progress Claim* is issued.

7.6. Unless otherwise agreed in writing, payment in all cases is to be made by cash or by cleared funds deposited into the account of the *Contractor*. If any part of the *Contract Price* is paid by credit or debit card, then the *Customer* is also liable to pay a surcharge fee payable at the time of payment.

7.7. The *Customer* acknowledges that the *Customer* has no right of set off under the *Contract* (or otherwise) or to deduct any amount from a payment due to the *Contractor* under the *Contract*, or to hold any retention for defect or omissions.

7.8. Unless a prior agreement is reached with the *Contractor*, the *Customer* is not entitled to use or take possession of that part of the *Site* where the *Contract Works* are to be performed until the *Contractor* has been paid the *Contract Price*.

8. DEFAULT ON PAYMENTS

8.1. If the *Customer* fails to make any payment to the *Contractor* within five (5) days of the receipt of a *Progress Claim*, the *Contractor* is entitled to:

- (a) interest on the outstanding amount at rate of 18% per annum, payable from the date that is five (5) days after the date the *Progress Claim* was issued until the date of payment;
- (b) if the *Contract Works* are incomplete, immediately suspend the *Contract Works* for a period ending five (5) days after payment is received by the *Contractor* by giving written notice to the *Customer*, such period of suspension being added to the *Date for Practical Completion*; and
- (c) be paid as a debt due by the *Customer*, its actual costs and expenses of recovering amounts owing including debt collection costs, solicitors' costs, internal administrative fees and related fees and expenses.

8.2. If the *Customer* has paid any part of the *Contract Price* which is dishonoured and the transaction is subsequently reversed, the *Customer* is liable for the amount of the reversed transaction in addition to any further costs incurred by the *Contractor* where the reversal is unlawful, fraudulent, or in contravention of the *Customer's* obligations under this *Contract*.

8.3. The *Customer* charges in the *Contractor's* favour as security for the payment of all monies owing to the *Contractor* by the *Customer*:

- (a) where the *Customer* is **not** a resident owner, all of the *Customer's* estate and interest in any land including the *Site*;
- (b) any other assets, other than the land constituting the *Site*, whether tangible or intangible in which the *Customer* now has any legal and/or beneficial interest and/or in which the *Customer* may later acquire any such interest.

8.4. Where the *Contractor* has an interest in land pursuant to Clause 8.3(a), the *Customer*:

- (a) grants an equitable mortgage over the land to the *Contractor*, charging the land as security for the performance by the *Customer* of all of the *Customer's* obligations under the *Contract*;
- (b) agrees to the *Contractor* lodging a caveat over the land to secure the *Contractor's* interest as equitable mortgagee;
- (c) agrees to do all things and sign all documents necessary to enable the *Contractor* to lodge the caveat;
- (d) is liable for all stamp duty, fees, costs, charges and expenses incurred by the *Contractor* or arising by the operation of this Clause and on any caveat lodged by the *Contractor* on an indemnity basis; and

9. VARIATIONS AND LATENT CONDITIONS

Variations

9.1. Either party may give to the other a written notice requesting a variation of the *Contract Works*. The variation may either add or omit work from the *Contract Works*.

9.2. The *Contractor* may, at its absolute discretion, agree to carry out any variation requested by the *Customer*.

9.3. Before commencing any work comprising a variation, the *Contractor* must ensure that the details of the variation are put in writing in a variation document, signed by both parties.

9.4. The variation document must:

- (a) be readily legible;
- (b) describe the variation;
- (c) state the date of the request for the variation;

(d) state the *Contractor's* estimate of any period of delay to the progress of the *Contract Works* as a result of the variation;

(e) state any adjustment to the *Contract Price*, or the method for calculating the adjustment; and

(f) state when any adjustment to the *Contract Price* is to be claimed or accounted for.

9.5. The *Contractor* must give the *Customer* a copy of the signed variation document within two (2) days of the earlier of when the variation is agreed or before any work the subject of the variation is started.

9.6. Where a variation results in an increase to the *Contract Price*, the *Customer* must pay the *Contractor* the amount of the increase in accordance with the time stated in the variation document.

9.7. Notwithstanding its obligations under this Clause, the *Contractor* is not required to give the *Customer* a variation document prior to commencing work if the work the subject of the variation is urgent and it is not practicable to do so.

Latent Conditions

9.8. Within two (2) days of becoming aware of a *Latent Condition*, the *Contractor* must give written notice to the *Customer* describing the *Latent Condition* and providing an estimate of the time, cost and work required to overcome the *Latent Condition*.

9.9. Within one (1) day of receipt of the *Contractor's* notice under Clause 9.8, the *Customer* must give written notice to the *Contractor* instructing the *Contractor* to proceed with the work required to overcome the *Latent Condition*.

9.10. Except in the case referred to in Clause 9.7, the *Contractor* must not undertake any action to overcome the *Latent Condition* until the *Customer's* notice under Clause 9.9 is received.

9.11. The *Customer's* notice under Clause 9.9 will be a deemed variation to the *Contract Works* and Clause 9.6 applies.

10. EXTENSION OF TIME CLAIMS AND DELAY COSTS

Extension of time claims

10.1. If the progress of the *Contract Works* is delayed by any of the following causes:

- (a) weather or conditions resulting from weather;
- (b) any order of a Court, Tribunal or other authority;
- (c) any act or omission of the *Customer*, including the *Customer's* failure to sign a variation document, give its consent to a variation due to a legal requirement or *Latent Condition*, or a delay by the *Customer* in giving a direction under Clause 11.3;
- (d) any civil commotion or industrial dispute affecting the *Contract Works* or the supply of materials for the *Contract Works*;
- (e) any variation to the *Contract Works*;
- (f) any suspension of the *Contract Works* by the *Contractor* under this *Contract*;
- (g) the unavailability of any labour or materials necessary to carry out the *Contract Works*;
- (h) the industry shutdown being a 3-week period commencing on or about 22 December each year, if construction during the Christmas period was not reasonably foreseeable at the *Contract Date*; or
- (i) any other matter, cause or thing beyond the control of the *Contractor*, the *Contractor* is entitled to make a claim for an extension to the *Date for Practical Completion* equivalent to the period of the delay.

10.2. To claim an extension of time to the *Date for Practical Completion*, the *Contractor* must within five (5) days of when the *Contractor* became aware of the cause and extent of the delay, give to the *Customer* a written notice claiming the extension of time.

10.3. If the *Customer* does not, within a further two (2) days, notify the *Contractor* in writing that the extension of time claim is approved or rejected (including reasons for such rejection), the parties consent to the *Contractor's* extension of time claim becoming a notice of dispute under Clause 17.1.

Delay costs

10.4. The *Customer* shall reimburse the *Contractor's* reasonable costs incurred during the period of delay, irrespective of whether the *Customer* has approved the *Contractor's* claim for an extension of time.

11. SUSPENSION

11.1. The *Contractor* may, by written notice to the *Customer*, give notice of its intention to suspend the *Contract Works* for the following reasons:

- (a) where the *Customer* fails to make payment of a *Progress Claim*

that is not the subject of a dispute under Clause 17 within five (5) days of the receipt of the *Progress Claim*;

(b) where the *Customer* accesses the *Site* or takes possession or the *Contract Works* in breach of Clause 3;

(c) where any dispute or difference between the parties has been referred under Clause 17 and it is not reasonably possible for the *Contractor* to proceed with the *Contract Works* whilst the dispute is unresolved; or

(d) where the *Customer* is otherwise in breach of this *Contract*.

11.2. The written notice in Clause 11.1 must set out the details of the *Customer's* failure and the *Contractor's* intention to suspend the *Contract Works* if the failure is not remedied within two (2) days after the notice is given.

11.3. If the *Customer* does not remedy the failure specified in the notice, the *Contractor* may, upon giving a further written notice to the *Customer*, suspend the *Contract Works*.

11.4. The *Contractor* must recommence the *Contract Works* within two (2) days after the *Customer* remedies the failure and gives the *Contractor* written notice requiring the *Contractor* to recommence the *Contract Works*. 11.5. The *Customer* shall reimburse the *Contractor's* reasonable costs incurred during a suspension of the *Contract Works*.

12. TERMINATION

12.1. If either party:

(a) is in substantial breach of the *Contract*; or

(b) becomes insolvent or takes advantage of the laws of bankruptcy,

the party not in default may give written notice to the defaulting

(c) describing the breach or breaches of the *Contract* by the party in default; and

(d) stating the party's intention to terminate the *Contract* unless the defaulting party remedies the breach or breaches within five (5) days after receiving the notice referred to in this Clause.

12.2. If the defaulting party fails to remedy the breach or breaches stated in any notice served pursuant to Clause 12.1, the party not in default, may immediately, without prejudice to any other rights or remedies, terminate this *Contract* by a further written notice to the defaulting party.

12.3. If:

(a) the *Contractor* terminates this *Contract* pursuant to this Clause, the *Contractor* is entitled to recover from the *Customer* all losses, costs, expenses and damages in connection with the *Customer's* breach, and the termination, as if the *Customer* had wrongfully repudiated the *Contract*. The *Contractor* may remove from the *Site*, and retain, all materials, goods, plant and equipment previously provided by the *Contractor*;

(b) the *Customer* terminates the *Contract* pursuant to this Clause, the *Contractor* is entitled to retain a reasonable price for the work done up to and including the date the *Contract* ends, including its out-of-pocket expenses.

12.4. If the *Contractor* or the *Customer*, as applicable

(a) enters into certain arrangements for the purpose of avoiding becoming bankrupt or being wound up in insolvency; or

(b) appoints an administrator, then the right to terminate this *Contract* pursuant to Clause 13 may be limited by the *Corporations Act 2001* (Cth).

13. DEFECTS

13.1. The *Contractor* shall, at its own cost, make good all defects or omissions that may appear in the *Contract Works* within six (6) months after the *Date of Practical Completion*.

13.2. If any such defect or omission appears within six (6) months after the *Date of Practical Completion*, the *Customer* must within seven (7) days of becoming aware of the defect give the *Contractor* written notice to make good the defect or omission and shall give the *Contractor* access to the *Site* for that purpose.

13.3. The *Contractor* shall make good the defect or omission within thirty (30) days of receiving the *Customer's* notice under Clause 13.2.

13.4. The *Contractor* is under no obligation to rectify any defects or omissions in the *Contract Works* which:

(a) have arisen as a result of:

(i) any act or omission of the *Customer*, including the *Customer's* failure to properly maintain the *Site* and/or the *Contract Works*;

(ii) the *Contract Works* including any accessories, equipment, other items supplied or installed by

the *Contractor* under this *Contract* having been modified by persons other than the *Contractor*;

(b) warranty has been excluded by the *Contractor* in Clauses 13.7, 13.8, 13.9, 13.10 and 13.11 of this *Contract*.

13.5. The *Contractor* reserves the right to claim a call-out fee and the cost of any work required to rectify a defect or omission notified by the *Customer* under Clause 13.2 where it is determined that such defect or omission is not a defect or omission in the *Contract Works* performed by the *Contractor*.

13.6. To the maximum extent permitted by law:

(a) in respect of a failure of material or equipment supplied by the *Contractor*, the *Contractor's* liability to repair or replace the material or equipment is limited to the same extent that the manufacturer of the equipment is required to warrant the equipment;

(b) the *Contractor* does not accept liability for any minor defects or imperfections in the *Contract Works* (such as slight colour variations in metal); and

(c) the *Contractor's* liability to the *Customer* is limited to, at the *Contractor's* election, the re-performance of the *Contract Works* or the *Contract Price*.

Warranties in relation to blockages

13.7. To the maximum extent permitted by law, the *Contractor* provides no warranty for, and is not liable for, drain blockages.

13.8. The *Customer* accepts and acknowledges that:

(a) blocked drains generally indicate the presence of root growth or blockages from other external sources whereby the removal of an obstruction will not necessarily rectify the underlying issue;

(b) if the *Contract Works* involve clearing a blockage from a pipe and that pipe becomes blocked after the initial clearing, any further work undertaken to unblock that pipe during the currency of this *Contract* will be treated as a variation under Clause 9 (as the case may be);

(c) depending on the cause of the blockage and/or the number of areas that are contributing to the blockage, the *Contractor* may not be able to remove the blockage and replacement of pipes may be required at additional the *Customer's* additional expense; and

(d) if the *Contract Works* involve the clearing of any drains or pipes and equipment used in the *Contract Works* becomes caught, lodged or broken in a pipe or drain, the cost associated with the removal of that equipment shall be borne by the *Customer*.

(e) blockages caused by negative fall are unable to be repaired by drain clearing. Any additional works required to be undertaken by the *Contractor* to repair blockages caused by negative fall will be treated as a variation under Clause 9.

(f) if the removal of fixtures, including the cutting of pipes, is required in order to allow sufficient access to a blocked drain by the *Contractor*, the removal and reinstatement of these items, including any necessary repair of surrounding areas, will be an additional cost payable by the *Customer*.

Warranties in relation to leak detection

13.9. If the *Contract Works* relate to leaking, including but not limited to water, gas or waste pipes, water ingress, intrusion leaks, and any necessary *Search and Investigation Works*, the *Customer* acknowledges:

(a) that the *Contractor* will undertake investigations with all due care and skill but does not guarantee that all leaks will be identified. Secondary leaks may only become apparent after detection and repair of a primary leak.

(b) If a leak is identified and is, in the *Contractors* reasonable opinion, believed to be the primary source of the leak, no further *Search and Investigation Works* will be carried out by the *Contractor*.

Customer-supplied materials

13.10. To the maximum extent permitted by law, the *Contractor* provides no warranty for, and is not liable for, materials supplied by the *Customer* for use in the *Contract Works*.

No warranty due to misuse

13.11. To the maximum extent permitted by law, the *Contractor* provides no warranty for, and is not liable for any damage or defect in any fixture, fitting, material, or product installed during the *Contract Works* which is caused by the misuse or negligence of the *Customer*.

14. DAMAGE TO THE SITE

14.1. The *Contractor* is not liable to the *Customer* for any damage to the *Site* including but not limited to damage to the *Customer's* property, underground services, existing substrate or framing, existing fixtures, tiles or any private or public property, caused by reasonable acts of the *Contractor* or any third party, arising from

access to the *Site* to perform the *Contract Works* and/or performance of the *Contract Works*.

14.2. The *Contractor* accepts no liability for damage to finished surfaces, including but not limited to ceiling tiles and panels, face brickwork and rendered masonry surfaces, which are an unavoidable consequence of performing the *Contract Works*.

15. TITLE, RISK AND INSURANCE

Title and risk

15.1. Title to any materials supplied by the *Contractor* for the *Contract Works* shall not pass to the *Customer* unless and until the *Customer* has paid all amount owing for the relevant material.

15.2. Notwithstanding Clause 15.1, all risk in any materials supplied by the *Contractor* for the *Contract Works* shall pass to the *Customer* upon delivery of those materials to the *Site*.

15.3. Until title passes to the *Customer*:

(a) the *Customer* will hold the materials solely as bailee for the *Contractor* and the *Customer* will store the goods separately from its own goods and materials and those of other persons and in such a manner as will clearly identify the materials as the property of the *Contractor*;

(b) the *Customer* agrees not to cut, alter, affix or install any materials until title has passed to the *Customer*; and

(c) the *Contractor* retains its rights as an unpaid *Contractor* in respect of the materials.

15.4. The *Contractor* is not liable for any liability, loss or claim relating to any property placed on the *Site* without the *Contractor's* prior written consent.

Insurance

15.5. The *Contractor* is required to have in effect during the currency of the *Contract Works* all necessary insurances required to comply with relevant state legislation.

16. WORKPLACE HEALTH AND SAFETY

16.1. The *Contractor* must:

(a) comply with all applicable workplace health and safety laws, including industry codes of practices and advisory standards;

(b) comply with all environmental protection laws; and

(c) ensure that adequate and appropriate workplace health and safety instructions and supervision is provided to persons carrying out the *Contract Works*.

17. RESOLUTION OF DISPUTES

17.1. If either party considers that a dispute has arisen in relation to anything in connection with this *Contract*, during the progress of the *Contract Works* or after completion of any stage of the *Contract Works*, that party must immediately upon becoming aware of such circumstances, give to the other party a written notice setting out the details of the dispute.

17.2. If the dispute cannot be resolved through negotiation or mediation, the *Customer* or the *Contractor* (as the case maybe) must then give written notice to the other party advising that they intend to resolve the matter through other legal means as appropriate.

18. FINANCE AND EVIDENCE OF CAPACITY TO PAY

18.1. The *Customer* must give to the *Contractor* evidence of the *Customer's* capacity to pay the *Contract Price*:

(a) as soon as practicable after the *Contract Date*; and

(b) within five (5) days of a reasonable request by the *Contractor* for evidence of the *Customer's* capacity to pay the balance of the *Contract Price*.

18.2. If the *Customer* has obtained, or intends to obtain, finance from a *Lending Body* in respect of the *Contract Price*, then:

(a) the *Customer* must inform the *Contractor* that this *Contract* is subject to finance;

(b) the *Customer* must use all reasonable endeavours to obtain loan approval from the *Lending Body*;

(c) the *Customer* must give a direction to the *Lending Body* authorising the *Lending Body* to pay directly to the *Contractor* all money advanced to the *Customer* for payment of all or part of the *Contract Price* as adjusted under this *Contract*; and

(d) if the *Lending Body* refuses to approve the *Customer's* loan request and the *Customer* is unable to otherwise secure finance for the *Contract Price*, the *Contract* will come to an end and the *Customer* will be liable to the *Contractor* for all *Contract Works* carried out by the *Contractor* up to the date that the *Customer*

notifies the *Contractor* in writing that it has been unable to obtain finance.

(e) If the *Customer* obtains finance from a *Lending Body* for a loan amount less than the *Contract Price*, upon completion of the *Contract Works* any amount of the *Contract Price* not covered by the finance from a *Lending Body* becomes immediately payable by the *Customer*.

19. INDEMNITIES

19.1. The *Customer* indemnifies, and will keep indemnified, the *Contractor* against any loss, damage or *Action* arising out of the *Contract Works*, except to the extent that such loss damage or *Action* is caused or contributed to by the *Contractor*.

20. CONTRACT DOCUMENTS AND DISCREPANCY, ERROR AND AMBIGUITY

20.1. The following documents form part of this *Contract* and must be attached:

(a) the *General Conditions*;

(b) the *Quotation*; and

(c) the special conditions (if any).

20.2. In the event of any difference or inconsistency between the documents constituting this *Contract*, the *Contractor* must discuss the matter with the *Customer* and attempt to seek agreement on the correct interpretation of the documents.

20.3. Subject to Clause 17, any discrepancy, error or ambiguity in or between any documents comprising this *Contract* is to be resolved by adopting the order of precedence as follows:

(a) any special conditions;

(b) these *General Conditions*;

(c) the *Quotation*;

(d) any other documents recorded at Clause 20.1.

21. NOTICES / ELECTRONIC COMMUNICATION

21.1. Any notice under the *Contract* may be given by:

(a) hand delivery;

(b) prepaid post;

(c) SMS; or

(d) email, to the phone number, address or email address notified by a party at the time of booking, as updated from time to time in writing.

21.2. A notice given by SMS or email shall be deemed received if the recipient's phone or email server received the SMS or email irrespective of whether the recipient has opened the SMS or email.

21.3. The *Customer* and the *Contractor* consent to the use of the electronic method of delivery on the terms described in this Clause 21 and specifically agree to receive information and documentation relating to the *Contract* via electronic communication to the phone number and/or email address notified a party at the time of booking, as updated from time to time in writing. The *Customer* and the *Contractor* agree that where a document is required to be signed and/or initialled by a party, the requirement will be taken to have been met if an image of the signature and/or initials appears in the relevant document received by electronic communication from the party's email address, or the party provides express authorisation via SMS.

22. EXCLUDED ITEMS

22.1. Unless otherwise agreed in writing, the *Customer* and the *Contractor* agree that the following items do not form part of this *Contract* and are not included in the *Contract Price*:

(a) *Search and Investigation Works*;

(b) *Excavation Works*;

(c) works relating to water hammer;

(d) warranty or liability in respect of any nature on any work not actually performed by the *Contractor*;

(e) warranty or liability in respect of any work in whole or in part that is carried out by the *Customer* or others (prior to, during or after the *Contract*);

(f) survey of the *Site*;

(g) the cost of overcoming any *Latent Condition*;

(h) connection of services to the *Site*; or

(i) warranty or liability in respect of any intermittent or lingering smells.

(j) Any written report

(i) The preparation of a written report will incur additional fees. Any request for a written report must be submitted in writing prior to the commencement of the *Contract Works*.

23. GENERAL

Contract Price

23.1. The *Contract Price* is only valid for twenty-four (24) hours from the 'Quote Date' recorded on the *Quotation*. The *Contractor* reserves the right to recalculate the *Contract Price* if the *Customer* does not provide return a signed copy of the *Contract* to the *Contractor* within twenty-four (24) hours from the 'Quote Date' recorded on the *Quotation*.

Entire agreement

23.2. This *Contract* constitutes the entire agreement between the parties regarding its subject matter and supersedes all previous agreements, understandings and negotiations on the subject matter.

Waiver and severance

23.3. Except as provided at law or in equity or elsewhere in this *Contract*, none of the terms of this *Contract* shall be varied, waived, discharged or released, except with the prior consent in writing of the other party in each instance.

23.4. If any provision of this *Contract* is void, voidable, unenforceable or illegal, or has the effect of making another provision of this *Contract* void, unenforceable or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words) is to be severed from this *Contract* without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) which continue to have effect.

Assignment and subcontracting

23.5. Neither party may assign this *Contract*, any payment or any right, benefit or interest under this *Contract* without the prior written consent of the other party.

23.6. The *Contractor* may subcontract any part of the *Contract Works* but such subcontracting does not relieve the *Contractor* from the *Contractor's* obligations under this *Contract*.

Governing law and jurisdiction

23.7. This *Contract* is governed by, and is to be construed in accordance with, the law in force in the state where the *Contract Works* are to be carried out.

23.8. The parties submit to the exclusive jurisdiction of the courts, including courts of appeal, of the state where the *Contract Works* are to be carried out. Each party waives any right is has to object to an *Action* being brought in those courts without limitation.

Force majeure

23.9. A party whose performance of its obligations under this *Contract* is or will be affected by an act of God, war, natural disaster, terrorism, or any other event beyond the reasonable control of the parties may, by written notice to the other party:

(a) suspend the *Contract Works* to the extent that the act of God, war, natural disaster, terrorism, or any other event beyond the reasonable control of the parties prevents or delays performance; or

(b) terminate this *Contract*.

Customer acknowledgement

23.10. The *Customer* acknowledges that they have read and understood the terms of the *Contract* and agree to be bound by all provisions and execute it freely, intelligently and with duress of any kind.