



Since 1991

SALMON PLUMBING & HOT WATER

SALMON PLUMBING'S TERMS AND CONDITIONS OF TRADE

1 Introduction

1.1 Application of these Terms and Conditions

The Customer agrees that prior to placing an order with the Contractor, the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this agreement, "Contractor" is J.S.SALMON PTY LTD A.B.N. 34 089 268 495 also trading as SALMON PLUMBING and the Customer is the applicant named on the account with the Contractor or where no account exists then on the Quote provided by the Contractor to the Customer. In this Agreement "Goods" means goods and services.

2. QUOTES

2.1 Contractor Supply Quote - The Contractor shall give the Customer a Quote specifying:

- the work required to be done in order to fulfill the Customer's instructions; and
- an estimate of the Contractor's charge for the performance of such work.

2.2 Acceptance by the Customer - Where the Contractor has given the Customer a Quote:

- The Contractor need not commence work until the Quote has been accepted by the Customer;
- The Customer shall accept the Quote by instructing (in writing) the Contractor to commence the works by signing and returning a true copy of the Quote and/or Work Authorisation accompanied with a purchase order number;
- Acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms and conditions.
- Quotes are valid for thirty (30) days only, unless an extension has been authorised by the Contractor.

In acceptance of the Quote, the Customer warrants that it has not relied on any representation by the Contractor and its employees and agents other than as supplied in writing in the Quote.

2.3 Contractor may revise Estimate - The Contractor may amend the Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and the Contractor shall notify the Customer of such amendment as soon as practicable thereafter. Upon the Contractor giving the Customer notification of such amendment the amended estimate shall be deemed to be the Estimate for the purposes of the Terms and Conditions.

2.4 Variations to initial Quote - The Customer shall indemnify the Contractor from any additional cost incurred by the Contractor, should the Customer increase the scope of the goods and/or services to be provided by the Contractor.

3. DELIVERY

3.1 Goods - Delivery of the Goods shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement. The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated. The Contractor shall not be liable for any loss or damage whatever due to the failure by the Contractor to deliver the Goods (or any part of them) promptly or at all.

4. PAYMENT

4.1 Time for Payment - The Customer must, within thirty (30) days of the Customer receiving the Contractor's invoice, pay the Contractor the total amount set out in the invoice. The Contractor reserves the right to alter the time of payment at their discretion as per the quote or Work Authorisation.

4.2 Interest - The Contractor may charge interest at 2.5% per calendar month on amounts not paid within the time specified in clause 4.1 and 4.4.

4.3 Deposit - The Contractor may require a deposit from the

Customer, and if a deposit is so requested by the Contractor the Customer acknowledge the Contractor is under no obligation to start the contract period or undertake any works as requested by the Customer, until the Deposit is received by the Contractor in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Contractor on the part of the Customer, the Contractor shall be entitled to forfeit the deposit and claim for the balance owing on the Order and for any

other loss suffered by the Contractor by way of any remedy available to it as provided in these Terms and Conditions or at law or in equity generally.

4.4 Progress Payments -- When agreed progress payments are not honoured by the Customer, the Contractor reserves the right to halt any further work until such time as the outstanding payment is forthcoming. In addition penalty interest (as specified in 4.2) may be charged.

4.5 Damages - The Customer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay to the Contractor all sums outstanding as owed by the Customer to the Contractor including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a Solicitor and own client basis.

4.6 Accounts - Any account which has not been utilised by the Customer for a continuous period of twenty-four (24) months shall be closed by the Contractor without notice. Closure of accounts in no way affects the Contractor's right to pursue outstanding debts in accordance with the terms and conditions herein.

5. RISK

5.1 Delivery - The risk in the Goods shall pass to the Customer upon delivery/installation of the Goods to the Customer or its agent or to a third party nominated by the Customer.

6. RETENTION OF TITLE

6.1 Title - Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Contractor regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

6.2 Bailment - The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 6.1 and until that time:

- The Customer is not entitled to sell the Goods but only in the ordinary course of business
- The Customer must not encumber or otherwise charge the Goods
- The Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer.

6.3 Repossession - The Customer hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Contractor shall not be liable to the Customer or any person claiming through the Customer and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Contractor.





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If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Contractor by the Customer.

7. WARRANTY

7.1 The Warranty period for the Goods shall be twelve (12) months from the date of installation of the Goods or as specified on the quotation. The warranty period cannot be extended for whatever reason.

7.2 Any warranty as to the Goods on the part of the Customer shall be limited to the written Warranty provided by the Manufacturer to the Customer on or before installation of the Goods.

7.3 The Contractor reserves the right to make null and void the warranty should the goods be modified, altered, damaged or put to any undue stress other than in the way the goods were designed to perform.

7.4 In respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

8. DEFECTS/RETURN OF GOODS

8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Contractor of any alleged shortage in quantity, damage or failure to comply with the description. The Customer shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any damage.

8.2 Should the Customer agree to the return of Goods a 15% restocking fee will be applied.

9. LIABILITY

9.1 Non-excludable Rights - The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

9.2 Disclaimer of Liability - The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise

and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

9.3 Indirect Losses - Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or

anticipated savings;

(c) any loss or expense resulting from a claim by a third party; or

(d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in completing the Order or to deliver the Goods.

9.4 Force Majeure - The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary material or any other matter beyond the Contractor's control.

10. PRIVACY

10.1 The Customer hereby authorises the Contractor to collect, retain, record, use and disclose personal information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Contractor, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.

10.2 The Customer also authorises the Contractor to make enquiries with respect to the Customer's credit worthiness; to exchange information with other Credit Providers in respect to previous defaults of the Customer and to notify other Credit Providers of a default by the Customer.

11. GENERAL MATTERS

11.1 Outside work - If the Contractor has to obtain Goods and/or services from a third party in order to carry out the Customer's instructions then the Customer agrees to pay for the Goods and/or services.

11.2 **No Waiver- A** power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

11.3 Severability - Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

1.4 Governing law and jurisdiction - These Terms and Conditions are governed by the law in force in the State or Territory in which the Contractor's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

