

## **Terms & Conditions**

### **RTL Trades Pty Ltd T / A RTL Trades – Terms and Conditions of Trade**

#### **1. Definitions**

1.1 “RTL” shall mean RTL Trades Pty Ltd T/A RTL Trades, its successors and assigns or any person acting on behalf of and with the authority of RTL Trades Pty Ltd T/A RTL Trades.

1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by RTL to the client.

1.3 “Guarantor” shall mean that person (or persons) who agree/s to be liable for the debts of the Client on a principal debtor basis.

1.4 “Goods” shall mean all Goods supplied by RTL to the Client (and where defined) and are as described on the quotation/s, invoice/s, work authorisation/s or any other forms as provided by RTL to the Client.

1.5 “Services” shall mean all Services supplied by RTL to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined as above).

1.6 “Price” shall mean the Price payable for the Goods as agreed between RTL and the Client in accordance with Clause 4 of this contract.

#### **2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”).**

2.1 Nothing in this agreement is intended to have the effect of contracting out any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted in those Acts where applicable.

#### **3 Acceptance**

3.1 Any instructions received by RTL from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by RTL shall constitute acceptance of the Terms and Conditions contained herein.

3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these Terms and Conditions by the Client the Terms and Conditions are binding and can only be amended with the written consent of RTL.

3.4 The Client shall give RTL not less than fourteen (14) days prior written notice of any proposed property change of ownership, and/or any change in the Client’s name and/or any other change in the Client’s details. This includes but is not limited to, changes in the Client’s residential/business/postal address, facsimile number, or business practise. The Client shall be liable for any loss incurred by RTL as a result of the Client’s failure to comply with this Clause.

3.5 Goods are supplied by RTL only on the Terms and Conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that no such order is placed on terms that purport to override these Terms and Condition of trade.

#### **4 Price and Payment**

4.1 At RTL’s sole discretion, the Price shall be either:

a. As indicated on invoices provided by RTL to the Client in respect of the Goods supplied; or

b. RTL's quoted Price (subject to Clause 4.2) which shall be binding upon RTL provided that the Client shall accept RTL's quotation in writing within thirty (30) days.

4.2 RTL reserves the right to change the Price in the event of a mutually agreed upon variation to RTL's quotation.

4.3 RTL may submit details progress payment claims in accordance with RTL's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

4.4 At RTL's sole discretion:

a. A deposit may be required; or

b. Payment shall be due on delivery of Goods; or

c. Payment for approved Client's shall be made by instalments in accordance with RTL's payment schedule.

d. Additional charges/interest may apply for late or non-payment

4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card. If payment is made by credit card, a surcharge of up to two and a half percent (2.5%) of the price will be incurred. Alternatively, payment will be made by direct credit, or by any other method as agreed to between the Client and RTL.

4.7 GST as well as other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## **5 Promotions**

5.1 Any promotional offers outlined in the job/quote cannot be redeemed with any other specials, offers and other advertised promotions. By taking up the promotional offer, you forfeit any rights to claim additional discounts/benefits from other advertised offers.

## **6 Rock and Filled Ground**

6.1 Unless specifically stated in writing, RTLs' quotes and estimates do not include rock excavation, dewatering or supportive work, such as pier and beams for filled or made up ground.

## **7 Delivery of Goods**

7.1 At RTL's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by RTL or RTL's nominated carrier).

7.2 At RTL's sole discretion the costs of delivery are included in the Price.

7.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

7.4 RTL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisos in these Terms and Conditions.

7.5 RTL shall not be liable for any loss or damage whatsoever due to failure by RTL to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of RTL.

7.6 RTL shall not be liable for any loss or damage whatsoever due to failure by RTL to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of RTL.

## **8 Risk**

8.1 If RTL retains ownership of the Goods nonetheless all risk for the Goods passes to the Client on delivery.

8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, RTL is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by RTL is sufficient evidence of RTL's rights to receive the insurance proceeds without the need for any person dealing with RTL to make further enquiries.

8.3 Where the Client expressly requests RTL to leave Goods outside RTL's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

8.4 The Client acknowledged and agrees that the presence of plant/tree root growth and/or blockages generally indicated damaged pipes, accordingly the Client agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect to any work carried out in relation thereto.

## **9 Access**

9.1 The Client shall ensure that RTL has clear and free access to the work area/site at all times to enable them to undertake the works. RTL shall not be liable for any loss or damage to the site (including and without limitation to: damage to pathways, driveways and concreted, paved or grassed areas), unless due to the negligence of RTL, provided that best endeavors are evidenced to avoid / mitigate such damage.

## **10 Underground Locations**

10.1 Prior to RTL commencing any work, the Client must advise RTL of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other service that may be onsite.

10.2 Whilst RTL will take all care to avoid damage to any underground services the Client agrees to indemnify RTL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to service not precisely located and notified as per Clause 8.1.

## **11 Title**

11.1 RTL and the Client agree that ownership of the Goods shall not pass until:

- a. The Client has paid RTL all amounts owing for the particular Goods; and
- b. The Client has met all other obligations due by the Client to RTL in respect of all contracts between RTL and the Client.

11.2 Receipt by RTL 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; and until then RTL's ownership or rights in respect of the Goods shall continue.

11.3 It is further agreed that:

- a. Where practicable the Goods shall be kept separate and identifiable until RTL shall have received payment and all other obligations of the Client are met; and
- b. Until such time as ownership of the Goods shall pass from RTL to the Client, RTL shall give notice in

writing to the Client to return the Goods or any of them to RTL. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

c. RTL shall have the right of stopping the Goods in transit whether or not delivery has been made; and

d. If the Client fails to return the Goods to RTL then RTL or RTL's agent may (as the invitee of the Client) enter upon and into the land and premises where the Goods are situated and take possession of the Goods; and

e. If the Client is only a bailee of the Goods and until such time as RTL has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to RTL for the Goods, on trust for RTL; and

f. The Client shall not deal with the money of RTL in any way which may be adverse to RTL; and

g. The Client shall not be charged for the Goods in any way, nor accrue interest in the cost of the Goods while they remain the property of RTL; and

h. RTL can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and

i. Until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that RTL will be the owner of the end products.

## **12 Defects**

12.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery, (time being of the essence), notify RTL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quotation. The Client shall afford RTL an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which RTL has agreed in writing that the Client is entitled to reject, RTL's liability is limited to either (at RTL's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer with the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

12.2 Goods will not be accepted or returned other than in accordance with Clause 10.1.

## **13 Warranty**

13.1 Subject to the Conditions of Warranty set out in Clause 11.2, RTL warrants that if any defect in any workmanship of RTL becomes apparent and is reported to RTL within twelve (12) months of the date of delivery (time being of the essence) then RTL will either (at RTL's sole discretion), replace or remedy the workmanship.

13.2 The conditions applicable to the warranty given by Clause 11.1 are:

11.1.1 The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

a. Failure on the part of the Client to properly maintain any Goods; or

b. Failure on the part of the Client to follow any instructions or guidelines provided by RTL; or

c. Any use of any Goods otherwise than for any application specified on a quote or order form; or

d. The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

e. Fair wear and tear, any accident or act of God.

11.1.2 The warranty shall cease and RTL shall thereafter in no circumstances be liable under the terms of warranty if the workmanship is repaired, altered or overhauled without RTL's consent.

11.1.3 In respect of all claims, RTL shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

11.2 For Goods not manufactured by RTL, the warranty shall be the current warranty provided by the manufacturer of the Goods. RTL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

#### **14 Default and Consequences of Default**

14.1 Should any invoice issued remain unpaid 30 days from the date when payment becomes due, until the date of payment a fee of 5% of the invoice total will be applied per calendar month.

14.2 In the event that the Client's payment is dishonoured by any reason the Client shall be liable for any dishonour fees incurred by RTL.

14.3 If the client defaults in payment of any invoice when due, the Client shall indemnify RTL from and against all costs and disbursements incurred by RTL in pursuing the debt including legal costs on a solicitor and own client basis and RTL's collection agency costs.

14.4 Without prejudice to any other remedies, RTL may have, if at any time the Client is in breach of any obligations under the Terms and Conditions. RTL will not be liable to the Client for any loss or damage the Client suffers because RTL has exercised its rights under this Clause.

14.5 Without prejudice to RTL's other remedies at law, RTL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to RTL shall, whether or not due for payment, become immediately payable in the event that:

a. Any money payable to RTL becomes overdue, or in RTL's opinion the Client will be unable to meet its payment as they fall due; or

b. The Client becomes insolvent, convenes a meeting with its creditors or proposed or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

c. A Receiver, Manager, Liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **15 Security and Charge**

15.1 Despite anything to the contrary contained herein or any other rights which RTL may have howsoever:

a. Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to RTL or RTL's nominee to secure all amounts and other monetary obligations payable under these Terms and Conditions. The Client and/or the Guarantor acknowledge and agree that RTL (or RTL's nominee) shall be entitled to lodge where appropriated a caveat. The caveat will be removed once the all payments and other monetary obligations payable hereunder have been met.

b. Should RTL elect to proceed in any manner in accordance with this Clause and/or its sub-Clauses, the Client and/or Guarantor shall indemnify RTL from and against all RTL's costs and disbursements

including legal costs on a solicitor and own client basis.

c. The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint RTL or RTL's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this Clause 13.1.

## **16 Cancellation**

16.1 RTL may cancel any contract to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice RTL shall repay to the Client any sums paid in respect of the Price. RTL shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by RTL (including, but not limited to, any loss of profits) up to the time of cancellation.

16.3 Cancellation of orders for Goods made to the Client's specification or non-stocklist items will definitely not be accepted once production has commenced.

## **17 Unpaid RTL's Rights**

17.1 Where the Client has left any item with RTL for repair, modification, exchange or for RTL to perform any other Service in relation to the item and RTL has not received or been tendered the whole of the Price, or the payment has been dishonoured, RTL shall have:

- a. A lien on the item;
- b. The right to retain the item for the Price while RTL is in possession of the item;
- c. A right to sell the item.

17.2 The lien of RTL shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

## **18 Building and Construction Industry Payments Act 2004**

18.1 At RTL's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provision of the Building and Construction Industry Payments Act 2004 may apply.

18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

## **19 Dispute Resolution**

19.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within seven (7) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute.

19.2 At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved, either party may by further notice in writing delivered or sent by certified mail to the other party refer such dispute to arbitration.

19.3 Each party shall bears its own costs of presenting its position to the arbitrator(s) unless the arbitrator(s) make another determination in respect of the costs.

## **20 Privacy Act 1988**

20.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for RTL to obtain from a

credit reporting agency a creditor report containing personal credit information about the Client in relation to credit provided by RTL.

20.2 The Client agrees that RTL may exchange information about the Client with those credit providers either named as trade referees by the Client or names in a consumer credit report issued by a credit reporting agency for the following purposes:

- a. To assess an application by the Client; and/or
- b. To notify other credit providers of a default by the Client; and/or
- c. To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- d. To assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

20.3 The Client consents to RTL being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

20.4 The Client agrees that personal credit information provided may be used and retained by RTL for the following purposes (and for other purposes as shall be agreed between the Client and RTL or required by law from time to time):

- a. The provision of Goods; and/or
- b. The marketing of Goods by RTL, its agents or distributors; and/or
- c. Analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- d. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- e. Enabling the daily operation of Client's account and/or collection of amount outstanding in the Client's account in relation to the Goods.

20.5 RTL may give information about the Client to a credit reporting agency for the following purposes:

- a. To obtain a consumer credit report about the Client;
- b. Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

20.6 The information given to the credit reporting agency may include:

- a. Personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and drivers licence number);
- b. Details concerning the Client's application for credit or commercial credit and the amount requested;
- c. Advice that RTL is a current credit provider to the Client;
- d. Advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- e. That the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- f. Information that, in the opinion of RTL, the Client has committed a serious credit infringement (that is fraudulently or shown an intention not to comply with the Client's credit obligations);
- g. Advice that cheques drawn by the Client for on hundred dollars (\$100.00) or more, have been

dishonoured more than once;

h. That credit provided to the Client by RTL has been paid or otherwise discharged.

## **21 Plumbing Industry Council**

21.1 Various works required that RTL lodge a Form 4 with the Plumbing Industry Council, as per QLD State Regulations. If your invoice states that a Form 4 has been lodged, please note that it only covers works noted in this invoice. If works are inspected and other plumbing issues are found outside of the works, these items will need to be rectified at an extra cost to the client.

## **22 Gas Works**

22.1 When quoting on works to an existing gas line or service, it is assumed that the existing gas service is compliant and has no leaks. If RTL undertake the works, as per regulations, we are required to test the entire gas service/line after new works are finalised. If a portion of the gas service that has not been part of the quoted works is found to be defective or leaking, it will need to be repaired at an additional cost to the client.

## **23 Intellectual Property**

23.1 The customer warrants that all designs or instructions to RTL will not cause the plumber to infringe any patent, registered design or trademark in the execution of the customer's order.

23.2 All intellectual property rights in this job/quote, including design, text, graphics, logos, icons, style and format relating to this job/quote belong to or are licensed by RTL. You must not otherwise in any form or by any means copy, adapt, reproduce (other than for the purpose of viewing the website in your browser), store, modify, distribute, print, upload, display, perform, remove any credits, publish post frame within another distribution medium or create derivative works from any part of this job/quote or commercialise any information obtained without our prior written permission or, in the case of third party material, from the owner of the intellectual property rights in that material. These intellectual property rights are protected by Australian and international laws. RTL Trades, its logo and product names is a registered trademark of RTL Trades. All other company and product names and logos are trademarks or registered trademarks of their respective owners.

## **24 Customer Disclaimer**

24.1 The customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to them by any servant or agent of RTL, and the customer acknowledges that they purchase the goods and services solely upon their own skill and judgement and that RTL shall not be bound by, nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which warranty shall be personal to the customer.

## **25 General / Severance**

25.1 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2 These Terms and Conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.

25.3 RTL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss



and/or expense (including loss of profit) suffered by the Client arising out of break by RTL of these Terms and Conditions.

25.4 In the event of any breach of this contract by RTL the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of Goods.

25.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RTL nor to withhold payment of any invoice because part of that invoice is in dispute.

25.6 RTL may licence or sub-contract all or any part of its rights and obligations without the Clients consent.

25.7 The Client agrees that RTL may review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which RTL notifies the Client of such change.

25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

25.9 The failure by RTL to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect RTL's right to subsequently enforce that provision.