

TERMS AND CONDITIONS OF CONTRACT

1. Interpretation

In these conditions of contract:

Contract means the contract for supply of Goods and/or Services between the parties described on the Quotation Sheet and comprises in its entirety the Quotation Sheet, these conditions, and the Documents in that order of priority.

Consequential Loss means any loss other than direct loss and to avoid doubt, includes loss of profit, loss of revenue, loss of interest, financing charges, payment or loss of rent, loss of opportunity, consultant costs, and loss of contract.

Delivery Address means the address set out in the Quotation Sheet.

Documents means the Documents incorporated into the Contract as listed in the Quotation Sheet or appended to these conditions of contract;

Goods means the goods, materials and equipment (including any instalment or part of them) to be delivered to the Customer or supplied by the Contractor for incorporation into the Works, as applicable, and as described in the Quotation Sheet and the Documents.

Insolvent – where a party ceases to carry on business or is, or states that it is, unable to pay its debts as they fall due, enters a scheme of arrangement, or is under external administration, bankrupt or in liquidation.

Laws include all acts, regulations, by-laws, and licenses relevant to the supply of the Goods or Services.

Loss means liability, loss, damages, fines, costs and expenses (and legal expenses on an indemnity basis) awarded against, suffered or incurred.

Price means the amount set out in the Quotation Sheet as adjusted in accordance with the Contract.

Site the location or locations where the Works are to be performed.

Works means all of the work to be performed and Goods to be supplied by the Contractor including variations and temporary works.

2. Conditions applying to the Works

2.1. These conditions of contract apply to the Works to the exclusion of any other terms and conditions. Any acceptance of the Contractor's Quotation, request by the Customer for the Contractor to commence performance of the Works or grant of access to the Site to perform the Works constitutes acceptance by the Customer of these conditions of contract.

2.2. No variation to these terms and conditions is binding unless agreed in writing by both parties.

3. Performance of Works

3.1. The Contractor must:

- (a) at all times during the performance of the Works be properly licensed and resourced, and comply with all Laws;
- (b) supply Goods that are:
 - (i) of satisfactory quality;
 - (ii) free from defects; and
- (c) carry out and complete the Works:
 - (i) in a good and workmanlike manner;
 - (ii) within a reasonable time; and
 - (iii) safely and without causing any injury to any person.

3.2. The Contractor may, at any time and at its absolute discretion, substitute any Goods with goods that are of equivalent or better standard.

3.3. The Customer must:

- (a) provide safe, all weather access to the Site and uninterrupted possession of the areas of the Site required for the performance of the Works;
- (b) provide all utilities and facilities required for the performance of the Works;
- (c) obtain the rights to any access to adjoining properties that are required for the performance of the Works;
- (d) not delay or interfere with the performance of the Works in any way; and
- (e) if the Customer is supplying any materials or equipment for the Works, ensure that they are provided in a timely manner, free from defects and suitable for the Works. The Contractor may, acting reasonably, determine that those materials, plant or equipment are not suitable and may provide an alternative. If that alternative is not acceptable to the Customer, that part of the Works will be omitted from the scope of the Works.

3.4. The Customer acknowledges and agrees that:

- (a) the reasonable time for completion is extended by the length of time that the Contractor is delayed in the delivery of Goods or performance of the Works by circumstances outside the reasonable control of the Contractor;
- (b) the Contractor is not responsible for damage to drains at the Customer's property where the damage is an unavoidable or likely result of the pre-existing condition of those drains or the performance of drain inspection, clearance or cutting work within those drains; and

- (c) the Contractor may recover any loss and damage that it suffers as a consequence of the condition of drains at the Customer's property.

4. Delivery of Goods

Where the Contract is for the supply of Goods only, those Goods must be delivered to the Delivery Address. Goods must be properly packed and delivered in an undamaged condition.

5. Non-compliant Goods or Works

5.1. The Contractor will use all reasonable endeavours to ensure that the Customer is entitled to the benefit of any manufacturers' warranties that are provided by in relation to any Goods.

5.2. If the Customer believes that any Goods supplied or any aspect of the Works performed by the Contractor do not comply with the Contract, the Customer must:

- (a) notify the Contractor:
 - (i) (within 24 hours of the Goods being delivered in the case of non-compliant Goods) that the Goods or the Works do not comply with the Contract; and
 - (ii) as soon as reasonably practicable in the case of any non-compliant aspect of the Works;
 - (iii) providing details of the non-compliance; and
- (b) give the Contractor a reasonable opportunity to inspect and if the Contractor elects to do so, replace, repair, or rectify the Goods or the Works.

5.3. The Contractor may:

- (a) notify the Customer that the Contractor does not agree that the Goods are defective; or
- (b) elect to repair the Goods or to supply replacement Goods of an equivalent or higher standard within a reasonable time.

5.4. Unless otherwise agreed, a defects liability period of [3 months] applies from the date the Works are handed over to the Customer. During the defects liability period the Contractor is obliged and entitled to rectify defects arising in connection with the Works but not damage that arises due to misuse, lack of maintenance or general wear and tear.

5.5. After the defects liability period has expired, provided that the Customer may have recourse to the manufacturer directly under the manufacturer's warranty.

6. Limitation of liability

6.1. Despite any other provision of the Contract, the parties acknowledge and agree that to the extent permitted by Law:

- (a) in no event will the Contractor's liability to the Customer exceed, and is limited to:
 - (i) replacing or repairing any defective Goods;
 - (ii) reperforming any defective Works; or
 - (iii) if the Contractor is not able to supply replacement compliant Goods or reperform the Works so that they comply with the Contract, refunding any monies paid by the Customer for Goods or Works that are non-compliant and making good any part of the Site that has been damaged during the performance of the Works; and
- (b) the Contractor will have no liability for any other Losses including due to the breach of contract or negligence of the Contractor, its employees or agents or the acts or omissions of the Customer or any third party not within the control of the Contractor.

6.2. Further, the parties acknowledge and agree that neither will be liable for any Consequential Loss suffered or incurred by the other.

7. Variations

7.1. The Customer may, at any time before the Works are complete, request the Contractor to vary the Works by asking for extra work or a change to the Works. The parties acknowledge and agree that the Customer is responsible for instructions that require the Contractor to perform a variation given by any employee, consultant, other contractor or agent of the Customer;

7.2. The Customer may request the Contractor to give a detailed quotation for the proposed variation and must pay the Contractor the reasonable cost of preparing the variation quotation.

7.3. A variation will be valued using the following order of precedence:

- (a) the Contractor's variation quotation; or;
- (b) if there is no variation quotation, using rates or prices provided by the Contractor; or
- (c) if the Contractor has not provided any rates or prices that are applicable, using reasonable construction industry rates or prices.

8. Price

8.1. The Price of the Goods and Works is as stated in the Quotation Sheet. The Price may change due to factors outside the Contractor's control and unless the Quotation Sheet expressly provides to the contrary, does not include any allowance for:

- (a) variations to the Works arising either at the request of the Customer or due to circumstances changing during the performance of the Works;
 - (b) costs associated with delays out of the reasonable control of the Contractor;
 - (c) costs associated with unforeseen site conditions including subsurface conditions, drains, contamination, groundwater, condition of existing structures (including asbestos) and existing services and services infrastructure, water ingress and damage;
 - (d) costs associated with any materials or equipment being supplied by the Customer;
 - (e) increases or decreases resulting from exchange rate fluctuations.
- 8.2. To avoid doubt, the Contractor may recover any Loss associated with any of the items set out in clause 8.1 from the Customer.

9. Terms of Payment

- 9.1. If required by the Contractor, the Customer must pay a deposit before the Contractor commences performance of the Works. The deposit must be paid within 7 days of the date of the Contractor's invoice and will be accounted for to the Customer in the last payment claim.
- 9.2. The Contractor may submit invoices for the Price for Goods and the Works as adjusted in accordance with the Contract. Progress claims on account of the Price for work performed may be submitted in accordance with the Quotation Sheet or if dates for progress claims are not provided for in the Quotation Sheet, on the 14th and last days of the month for Works performed to date of the invoice.
- 9.3. The Customer must pay the amount of each invoice without deduction or set off within 7 days of the date of the invoice or on completion of works.
- 9.4. The Contractor is entitled to charge interest on any amounts that are not paid by the due date for payment at a rate of 8% per annum.

10. Risk and Property

- 10.1. Risk of damage to or loss of the Goods passes to the Customer upon delivery to the Delivery Address.
- 10.2. Property in the Goods passes to the Customer when payment for the Goods is received by the Contractor. The parties acknowledge that this clause 10.2 creates a security interest for the benefit of the Contractor.

11. Insurance and indemnity

- 11.1. The Contractor must obtain public liability insurance in the amount of \$20,000,000 as a minimum and in any event, sufficient to cover its potential liabilities in relation to this Contract, and must ensure that any employees engaged in the performance of the purchase order are registered with WorkCover SA or equivalent body in the applicable state, territory or country. Further, the Contractor must insure the safe carriage and delivery of the Goods to the Delivery Address.
- 11.2. The Customer must ensure that the property upon which the Works are being performed is fully insured including to cover the Works being performed by the Contractor.

12. Intellectual Property

- 12.1. Any Documents produced by the Contractor for the Works, remain the property of the Contractor and all intellectual property rights in the Documents, vest in and/or remains with the Contractor. The Customer must not disclose or use any Documents produced by the Contractor for any other purpose than in connection with the Works.
- 12.2. The Customer warrants that it is the owner of any intellectual property rights in any documentation provided by the Customer and is able to and does license the Contractor to use that documentation for the purposes of the Works.

13. Termination

- 13.1. The Contractor may suspend the Works immediately if any invoice of the Contractor remains unpaid after the due date for payment. If the invoice is not paid within 7 days of the due date for payment, the Contractor may terminate the Contract and recover from the Customer all sums due at the date of termination along with any other costs, expenses, losses or liabilities incurred or suffered by the Contractor up to the date of termination.
- 13.2. Either party may terminate the Contract for a substantial breach of contract by the other party, provided that the party who intends to terminate the Contract has first written to the other party:
 - (a) notifying that other party that it intends to terminate the Contract;
 - (b) specifying the substantial breach complained of; and
 - (c) giving the other party a reasonable opportunity to rectify the substantial breach (and in any event no less than 28 days).
- 13.3. To the extent permitted by Law, either party may terminate the Contract when the other party is Insolvent by giving notice to that that party.

14. General

- 14.1. The Contract is governed by the Laws of South Australia and the parties submit to the exclusive jurisdiction of the South Australian courts and, where applicable, the Federal Court of Australia. The parties agree that

prior to commencing any court proceedings they will make genuine and good faith attempts to resolve any disputes by executive negotiation and by mediation.

- 14.2. Neither party may assign this agreement without the consent of the other party, such consent not to be unreasonably withheld.

Customer name/organisation:	
Authorised agent name and position (if applicable):	
Customer address:	
<i>I have read and accept the Terms and Conditions of Contract for All Elements Plumbing & Gas to undertake both current and any future reoccurring plumbing and gas works for me/or authorised agent to sign on behalf of an organisation at the above-mentioned customer address.</i>	
Signature:	
Date:	

