

Terms and Conditions

1. Definitions

- 1.1 "Bell Plumbing & Gas" shall mean Bell Plumbing & Gas, or any agents, contractors and employees hereof.
- 1.2 "the Client" shall mean any person purchasing products and/or services from Bell Plumbing & Gas or any person acting on behalf of, and with the authority of, any person purchasing products and/or services from Bell Plumbing & Gas.
- 1.3 "the Premises" means the place or location where Bell Plumbing & Gas provided plumbing and/or gas fitting services for the Client.

2. Payments

- 2.1 Payment is due at the time of service unless prior arrangements have been made directly with the Bell Plumbing & Gas accounts department. Credit card, eftpos, cash and direct deposit payments are the only accepted methods of payment.
- 2.2 Bell Plumbing & Gas are entitled to claim progress payments ('Progress Payment Claims') for that part or parts of work that it has completed at weekly intervals unless otherwise agreed in writing.
- 2.3 If the Client fails to pay as specified and claimed, the Client shall pay interest on the Progress Payment Claim to be calculated daily at the rate of 8% per annum, and Bell Plumbing & Gas shall be entitled to suspend the work until the Progress Payment Claim together with interest and costs thereon have been paid in full to Bell Plumbing & Gas.
- 2.4 The Client is not entitled to withhold payment of Progress Payment Claims on the grounds that it is waiting for payment from another party.
- 2.5 Expenses and disbursements incurred by Bell Plumbing & Gas in recovering any overdue Progress Payment Claims, including any legal and debt collection agency costs, will be payable by the Client on a full indemnity basis.
- 2.6 The Client gives permission for Bell Plumbing & Gas to carry out credit card transactions over the phone using the Client's credit card details to the value of any invoice issued to the Client or as per payment arrangements for deposits or Progress Payment Claims.
- 2.7 All credit card payments in excess of \$1,000.00 will be charged a merchant transaction fee of 1.5% of the amount paid.
- 2.8 The Client accepts that invoices shall be provided in categories of labour, materials and GST only. Itemised accounts will not be issued unless prior arrangement has been made with the Bell Plumbing & Gas accounts department.

3. Prices

- 3.1 The price quoted works at the Premises have been determined on the basis of information regarding the extent and nature of the works as provided by the Client.
- 3.2 Prices are quoted on the basis of existing costs of labour, fixtures and materials at the date of the quotation and are valid for a period of 30 days.

4. Variations

- 4.1 All extras, alterations or variations requested by the Client and which are not included in an original quotation provided by Bell Plumbing & Gas must be provided in writing. The cost of any such extras, alterations or variations must be agreed to by the Client in writing prior to Bell Plumbing & Gas commencing the additional works.

- 4.2 In the event that the Client varies, suspends or cancels any part or all of the works, and Bell Plumbing & Gas is, as a direct or indirect consequence thereof, subjected to additional costs and damages as a result, Bell Plumbing & Gas reserves the right to recover from the Client all costs and damages so incurred or committed inclusive of, but not limited to, any other expenses and loss of profits caused by the variation, suspension or cancellation. A certificate in writing from Bell Plumbing & Gas detailing the extent of such costs, expenses, loss of profit or damage as the case may be shall be prima facie evidence thereof.

5. Removal of Materials

- 5.1 Any materials removed from the Premises as a necessary consequence of carrying out works authorised by the Client, and which are not re used in carrying out the works become the property Bell Plumbing & Gas at the completion of the works.

6. Defects in Existing Installations

- 6.1 If, during the course of any works authorised by the Client, Bell Plumbing & Gas discovers any defects in any part of the Premises or in any existing installation on the Premises or connection to any existing installation on the Premises which in the reasonable opinion of Bell Plumbing & Gas must be repaired or replaced before the works can commence or continue, Bell Plumbing & Gas may, if appropriate, suspend carrying out the works and immediately notify the Client of the suspension and the reason therefore and submit its price for such additional work to the Client.
- 6.2 If the client fails to sign an authority directing Bell Plumbing & Gas to carry out the extra work, this Contract shall be at an end and Bell Plumbing & Gas will be entitled to payment for all work done and materials supplied at the date of suspension of the works.

7. Defective Foundations or Structures

- 7.1 Bell Plumbing & Gas is not liable for any loss or damage caused to any person, structure or thing resulting from insufficient or defective foundations, walls or other structures on and around the Premises not erected by Bell Plumbing & Gas.

8. Existing Services

- 8.1 The Client warrants that existing services are in good order and condition. The reinstatement of services cut or damaged during the course of any works is not included in the price forming part of an original quotation.
- 8.2 If in the reasonable opinion of the Bell Plumbing & Gas the existing services are not in good order or condition, Bell Plumbing & Gas will provide an estimate in writing of the work and materials necessary to effect the repair or renewal to them and the terms on which Bell Plumbing & Gas will carry out the repair or renewal and the price and terms for such repair or renewal must be agreed in writing by the Client and Bell Plumbing & Gas prior to any work commencing.

9. Removal of Soil

- 9.1 The removal of surplus excavated soil will be stacked neatly in heaps in positions convenient for topping up trenches after subsidence. If the Client requires surplus excavated soil to be removed from site, such removal will incur additional fees and charges.
- 9.2 In the event that Bell Plumbing & Gas and the Client are unable to agree to a price for the removal of surplus excavated soil, Bell Plumbing & Gas will not be obliged to remove the surplus excavated soil from site.

10. Client's Materials.

- 10.1 If any fixtures, fittings or materials are supplied by the Client for use in any works authorised by the Client, the fixtures, fittings and materials so supplied will be stored, handled and installed by Bell Plumbing & Gas at the sole risk of the Client.

11. Tree Roots and Made up Ground

- 11.1 Unless specifically included in written quotes and/or estimates, the cost of any special treatment of drains on account of proximity of tree roots, particular soil types, seepage, or made up ground will be charged out as a variation to the original price.
- 11.2 Should any competent authority, local authority, inspector or person authorised by an authority, order special requirements for the treatment of drains which are not reasonably ascertainable at the time of quoting, (for example, concreting, additional bedding, cast iron pipes), the cost of such additional special requirements will be charged to the Client as an extra to any original quote.

12. Rock and Filled Ground

- 12.1 Unless specifically included in written quotes and/or estimates, rock excavation, dewatering or supportive work such as pier and beams for filled or made up ground will be charged out as a variation to the original price. Quotation is based on excavation of clean soils only, unless otherwise specified in writing.
- 12.2 If the Client requires any rock, reef or other solid material encountered in the course of excavation to be removed from site, such removal will incur additional fees and charges.
- 12.3 Existing soils shall be returned to excavated areas where possible and ground shall be left filled.
- 12.4 Unless specifically included in written quotes and/or estimates, the cost of landscaping and concrete works are not included in quotes. All concrete, paving and landscape works including shrub / plant and lawn replacement will be treated as a variation and additional fees and charges will apply.

13. Drains and Sewer

- 13.1 The Client understands that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Additionally, the Client agrees that blocked drains, sewer pipes and storm water lines cannot be permanently fixed by simply removing "plant/tree root growth" or cleaning the drain. Therefore, no warranty is provided in relation to future blockages regardless of timeframe reoccurring whether in the same location or other drainage / sewer lines within the same property.
- 13.2 The Client acknowledges that Close Circuit Television (CCTV) is a specialist piece of equipment which may or may not be used at the sole discretion of Bell Plumbing & Gas in an attempt to identify the source of a blocked drain. Should CCTV equipment be used the Client acknowledges that additional charges will applied.

14. Part Performance

- 14.1 If for any reason Bell Plumbing & Gas needs to terminate performance of all or part of the works, it is entitled to be paid for that part or parts of the works that Bell Plumbing & Gas has completed. The procedure for payment shall be the same as for Progress Payment Claims.

15. Warranties and Liabilities

- 15.1 Bell Plumbing & Gas warrants that, subject to the conditions of warranty set out in this clause 15, it will repair or replace any defects in workmanship which become apparent within 6 months from the date of completion of the work.
- 15.2 The warranty in this clause 15 to repair or replace any defects in workmanship in the work is subject to the following conditions:
- (a) Failure of the work must not be due to fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to comply with Bell Plumbing & Gas' instructions

(whether in writing or oral), misuse, alteration or repair of the work with Bell Plumbing & Gas' written consent or use or application of the work with incompatible products;

- (b). Bell Plumbing & Gas shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Client; and
- (c). Any work which is found to be faulty due to abuse or misuse will be charged to the Client at cost.

Subject to this clause 16, Bell Plumbing & Gas shall not be liable and the Client releases it from any claims in respect of any injury, loss or damage (whether direct or consequential) arising from any defect in, or in the operation of, the work or any part thereof or from loss of use thereof caused by any act or omission on Bell Plumbing & Gas' part (including but not limited to negligent acts or omissions), unless the responsibility for any claim has been specifically accepted by Bell Plumbing & Gas in writing.

In any event, Bell Plumbing & Gas's liability under this clause 15 is strictly limited to the repair and replacement (at the election of Bell Plumbing & Gas) of defective work in accordance with this clause 15.

16. Competition and Consumer Act and Fair Trading Act (WA)

16.1 Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Client by the Competition and Consumer Act 2010 (Cth), the Fair Trading Act 2010 (WA), the Home Building Contracts Act 1991 (WA) or any other applicable law that cannot be excluded, restricted or modified by agreement. To the fullest extent permitted by law, Bell Plumbing & Gas' liability for a breach of a condition or warranty implied by the Part 3-2 of Chapter 3 of the Australian Consumer Law ('ACL'), and ACL (WA), (other than s 51, s 52 or s.53) is limited to:

- (a). the supplying of work by Bell Plumbing & Gas again; or
- (b). the payment of the reasonable cost of having the defective work supplied again.

17. Indemnity

17.1 The Client indemnifies Bell Plumbing & Gas, regardless of any negligence on the part of Bell Plumbing & Gas, against:

- (a). all losses incurred by Bell Plumbing & Gas;
- (b). all liabilities incurred by Bell Plumbing & Gas; and
- (c). all costs actually payable by Bell Plumbing & Gas to its own employees, servants agents and/or sub-contractors and any other expenses incurred by Bell Plumbing & Gas in connection with a demand, action, arbitration or other proceeding (including without limitation mediation, arbitration, compromise, out of court settlement or appeal); arising directly or indirectly as a result of or in connection with the performance of the work by Bell Plumbing & Gas to the Client unless caused by wilful misconduct on the part of Bell Plumbing & Gas or any of its employees, servants, agents and/or sub-contractors acting within the scope of their employment or engagement by Bell Plumbing & Gas.

The Client must pay to Bell Plumbing & Gas all liabilities, costs and other expenses referred to in this clause 17, whether or not Bell Plumbing & Gas has paid or satisfied them.

18. Risk

18.1 Risk in the work performed and/or materials supplied shall pass to the Client as soon as the work is carried out or the materials supplied as the case may be. Property in and title to the materials

provided or supplied by Bell Plumbing & Gas shall not pass to the Client until those materials and all other amounts owed to Bell Plumbing & Gas have been paid in full.

19. Completion and Delays

- 19.1 Bell Plumbing & Gas will complete works in good and workmanlike manner as soon as reasonably practicable.
- 19.2 Bell Plumbing & Gas is not liable for any delay in completion or damages occasioned directly or indirectly as a consequence of any cause beyond the reasonable control of Bell Plumbing & Gas including (without limiting the foregoing) weather conditions, labour, disputes, accidents, fire, act of God, civil disturbances, shortages of material, or difficulty of securing labour.
- 19.3 If the Client or Bell Plumbing & Gas is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during that time, but only to the extent that, compliance is prevented or delayed.
- 19.4 Bell Plumbing & Gas shall not be liable for any delay in the completion of works, whatsoever and howsoever arising.

20. Severability

- 20.1 Any provision of these Terms and Conditions that is or becomes illegal, invalid or enforceable in any jurisdiction, is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.

21. Notice

- 21.1 The Client agrees that service of any notice or court documents may be effected by forwarding same by prepaid post or facsimile to the last known address of the Client.

22. Applicable Law and Jurisdiction

- 22.1 The law applicable in Western Australia, including particularly the HBCA, governs these Terms and Conditions and each party submits to the exclusive jurisdiction of the courts of that state and of the Commonwealth of Australia.

23. General

- 23.1 These Terms and Conditions:
- (a) Are the entire agreement and understanding between Bell Plumbing & Gas and the Client on everything connected with the subject matter of these Terms and Conditions; and
 - (b) Supersede any prior agreement or understanding on anything connected with that subject matter.
- 23.2 Unless otherwise stated herein, Bell Plumbing & Gas and the Client have entered into these Terms and Conditions without relying on any representation by the other or any person purporting to represent the other.

24. Settlement of Disputes

- 24.1 Any dispute arising under these Terms and Conditions may be referred by notice in writing, by either the Client or Bell Plumbing & Gas, (i) to mediation, and (ii) thereafter, arbitration. Such mediation and arbitration must be conducted by a person agreed on by the parties or, in the absence of agreement, nominated to be arbitrator by the Chairman for the time being of the Institute of Arbitrators and

Mediators of Australia (Inc) ('IAMA') WA Chapter. On receipt of a notice of dispute, the other party may then decide whether it wishes to proceed with the mediation/arbitration or whether it wishes to proceed by application to the Building Disputes Tribunal or otherwise.