

Terms and Conditions of Supply

1. Definitions

"TPAGH" means The Plumbing and Gas Heroes (ABN 80 894 894 125), its successors and assigns or any person acting on behalf of and with the authority of The Plumbing and Gas Heroes.

"Client" means the person/s buying the Goods as specified in any invoice, document or Quote, and if there is more than one Client, Client is a reference to each Client jointly and severally.

"Delivery" means when TPAGH (or TPAGH's nominated carrier) delivers the Goods to the Client's nominated address (including a third party nominated by the Client to collect the Goods) even if the Client is not present at the address.

"Goods" means all Goods or Services supplied by TPAGH to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

"Price" means the Price payable for the Goods as agreed between TPAGH and the Client in accordance with clause 5.

"Request for Service" means a request for Goods or Services submitted by the Client to TPAGH in writing or communicated orally.

"Quote" means a quotation to carry out the work under a Request for Service which sets out the Price and the details of the Goods and Services to which these terms and conditions shall apply.

2. Terms of Supply and evidence of an agreement

2.1 An agreement will form and these terms and conditions will apply between the Client and TPAGH in the following way:

- 2.1.1 To order the Goods and/or Services, the Client must provide a Request for Service;
- 2.1.2 TPAGH will then provide the Client with a Quote; and
- 2.1.3 An agreement will form and these terms and conditions will be binding on the Client and TPAGH when the Client accepts the Quote and TPAGH commences any part of the supply of the Goods and/or Services including by, placing an order for the supply of Goods to TPAGH with any third party.

2.2 By accepting possession of any Goods or receiving the benefit of any Services, the Client acknowledges that Goods and/or Services are supplied in accordance with these terms and conditions.

3. Acceptance

- 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 3.2 These terms and conditions may only be amended with TPAGH's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and TPAGH.

4. Change in Control

4.1 The Client shall give TPAGH not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by TPAGH as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At TPAGH's sole discretion the Price shall be either:
 - 5.1.1 as indicated on any invoice provided by TPAGH to the Client; or

5.1.2 TPAGH's quoted price (subject to clause 3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 TPAGH has the right to change the Price:

- 5.2.1 if a variation to the Goods which are to be supplied is requested; or
- 5.2.2 if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- 5.2.3 where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, building defects, safety considerations, prerequisite work by any third party not being completed, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
- 5.2.4 in the event of increases to TPAGH in the cost of labour or Goods which are beyond TPAGH's control.

5.3 At TPAGH's sole discretion a deposit may be required.

5.4 TPAGH may submit a detailed payment claim at intervals not less than one (1) month for work performed up to the end of each month.

5.5 Time for payment for the Goods is of the essence. Unless otherwise agreed in writing with TPAGH, the Price will be payable by the Client 1 day from the date of invoice.

5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and TPAGH.

5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TPAGH an amount equal to any GST TPAGH must pay for any supply by TPAGH under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery

6.1 Subject to clause 3 it is TPAGH's responsibility to ensure that the Services start as soon as it is reasonably possible.

6.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that TPAGH claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond TPAGH's control, including but not limited to any failure by the Client to make a selection, or have the site ready for the Services or notify TPAGH that the site is ready.

6.3 At TPAGH's sole discretion the cost of Delivery is included in the Price.

6.4 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take Delivery of the Goods as arranged then TPAGH shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.5 Any time or date given by TPAGH to the Client is an estimate only. The Client must still accept Delivery of the Goods even if late and TPAGH will not be liable for any loss or damage incurred by the Client as a result of late Delivery.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery for the full replacement value of the Goods.

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

7.3 If the Client requests TPAGH to leave Goods outside TPAGH'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.

7.4 Where TPAGH is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and TPAGH shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) TPAGH or the employees of TPAGH reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then TPAGH shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 3) until TPAGH is satisfied that it is safe for the installation to proceed.

7.5 The Client acknowledges that Goods (including but not limited to paint, timber, granite, tiles & concrete) supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. TPAGH will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

7.6 Where the Client has supplied goods for TPAGH to complete the Services, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the goods. TPAGH shall not be responsible for any defects in the Services, any loss or damage to the goods (or any part thereof), howsoever arising from the use of goods supplied by the Client.

7.7 The Client acknowledges that TPAGH is only responsible for parts that are replaced by TPAGH and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify TPAGH against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

7.8 The Client acknowledges and agrees that no persons other than those authorised or employed by TPAGH are to walk on any treated roof surface for a period of 21 days after completion of the Services and at no time are any persons permitted to be in the areas of the Services. TPAGH shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause.

7.9 Any advice, recommendation, information, assistance or service provided by TPAGH in relation to Goods or Services supplied is given in good faith, is based on TPAGH's own knowledge and experience and shall be accepted without liability on the part of TPAGH and:

7.9.1 it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods and Services; and

7.9.2 if such advice or recommendations are not acted upon by the Client then TPAGH shall require the Client or their agent to authorise commencement of the Services in writing. TPAGH shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

Terms and Conditions of Supply

8. Blocked Drain

8.1 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where TPAGH is requested to clear such blockages, TPAGH can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, TPAGH will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.

9. Access

9.1 The Client shall ensure that TPAGH has clear and free access to the work site at all times to enable them to undertake the Services or delivery the Goods. TPAGH shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligent act or omission of TPAGH.

9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify TPAGH against all costs incurred by TPAGH in recovering such vehicles in the event they become bogged or otherwise immovable.

10. Underground Locations

10.1 Prior to TPAGH commencing any work the Client must advise TPAGH of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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, telecommunication cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

10.2 Whilst TPAGH will take all care to avoid damage to any underground services the Client agrees to indemnify TPAGH in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified in accordance with clause 10.1.

11. Accuracy of Client's Plans and Measurements

11.1 TPAGH shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, TPAGH accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

11.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or TPAGH places an order based on these measurements and quantities. TPAGH accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause 11.

12. Compliance with Laws

12.1 The Client and TPAGH shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and Services.

12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

12.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

13. Title

13.1 TPAGH and the Client agree that ownership of the Goods shall not pass until the Client has paid TPAGH all amounts owing to TPAGH in full.

13.2 Receipt by TPAGH 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.

13.3 It is further agreed that until ownership of the Goods passes in accordance with clause 13.1:

13.3.1 the Client is only a bailee of the Goods and must return the Goods to TPAGH on demand;

13.3.2 the Client holds the benefit of the Client's insurance of the Goods on trust for TPAGH and must pay to TPAGH the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

13.3.3 the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for TPAGH and must pay or deliver the proceeds to TPAGH on demand;

13.3.4 the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of TPAGH and must sell, dispose of or return the resulting product to TPAGH as it so directs;

13.3.5 the Client irrevocably authorises TPAGH to enter any premises where TPAGH believes the Goods are kept and recover possession of the Goods;

13.3.6 TPAGH may recover possession of any Goods in transit whether or not delivery has occurred;

13.3.7 the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of TPAGH; and

13.3.8 TPAGH may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

14. Personal Property Securities Act 2009 ("PPSA")

14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPS

14.2 The Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by TPAGH to the Client.

14.3 The Client undertakes to:

14.3.1 promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TPAGH may reasonably require to:

(a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(b) register any other document required to be registered by the PPSA; or

(c) correct a defect in a statement referred to in clause 14.3.1(a) or 14.3.1(b);

14.3.2 indemnify, and upon demand reimburse, TPAGH for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

14.4.3 not register a financing change statement in respect of a security interest without the prior written consent of TPAGH;

14.4.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of TPAGH;

14.4.5 immediately advise TPAGH of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

14.5 TPAGH and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

14.6 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

14.7 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

14.8 Unless otherwise agreed to in writing by TPAGH, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

14.9 The Client must unconditionally ratify any actions taken by TPAGH under clauses 14.3 to 14.5.

Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

15.1 In consideration of TPAGH agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15.2 The Client indemnifies TPAGH from and against all TPAGH's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TPAGH's rights under this clause.

15.3 The Client irrevocably appoints TPAGH as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects, Warranties and Returns

16.1 The Client must inspect the Goods on delivery and must within 7 days of Delivery notify TPAGH in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or Quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow TPAGH to inspect the Goods.

16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010 (CCA)) certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

16.3 TPAGH acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TPAGH makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. TPAGH's liability in respect of these warranties is limited to the fullest extent permitted by law.

Terms and Conditions of Supply

- 16.5 If the Client is a consumer within the meaning of the CCA, TPAGH's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 16.6 If TPAGH is required to replace the Goods under this clause or the CCA, but is unable to do so, TPAGH may refund any money the Client has paid for the Goods.
- 16.7 If the Client is not a consumer within the meaning of the CCA, TPAGH's liability for any defect or damage in the Goods is:
- 16.7.1 limited to the value of any express warranty or warranty card provided to the Client by TPAGH at TPAGH's sole discretion;
- 16.7.2 limited to any warranty to which TPAGH is entitled, if TPAGH did not manufacture the Goods;
- 16.7.3 otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- 16.8.1 the Client has complied with the provisions of clause 16.1; and
- 16.8.2 TPAGH has agreed that the Goods are defective;
- 16.8.3 the Goods are returned within a reasonable time at the Client's cost; and
- 16.8.4 the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding any clause in these terms and conditions, but subject to the CCA, TPAGH shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- 16.9.1 the Client failing to properly maintain or store any Goods;
- 16.9.2 the Client using the Goods for any purpose other than that for which they were designed;
- 16.9.3 the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- 16.9.4 the Client failing to follow any instructions or guidelines provided by TPAGH;
- 16.9.5 fair wear and tear, any accident, or act of God.
- 17. Intellectual Property**
- 17.1 Where TPAGH has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of TPAGH.
- 17.2 The Client warrants that all designs, specifications or instructions given to TPAGH will not cause TPAGH to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TPAGH against any action taken by a third party against TPAGH in respect of any such infringement.
- 17.3 The Client agrees that TPAGH may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which TPAGH has created for the Client.
- 18. Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TPAGH's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes TPAGH any money the Client shall indemnify TPAGH from and against all costs and disbursements incurred by TPAGH in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TPAGH's contract default fee, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies TPAGH may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions TPAGH may suspend or terminate the supply of Goods or Services to the Client. TPAGH will not be liable to the Client for any loss or damage the Client suffers because TPAGH has exercised its rights under this clause.
- 18.4 Without prejudice to TPAGH's other remedies at law TPAGH shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TPAGH shall, whether or not due for payment, become immediately payable if:
- 18.4.1 any money payable to TPAGH becomes overdue, or in TPAGH's opinion the Client will be unable to make a payment when it falls due;
- 18.4.2 the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 18.4.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Cancellation**
- 19.1 TPAGH may cancel any order 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 TPAGH shall repay to the Client any money paid by the Client for the Goods. TPAGH shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 Subject to clause 19.3, the Client may cancel an order prior to Delivery of the Goods or commencement of the Services. In the event that the Client cancels delivery of Goods or commencement of the Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by TPAGH as a result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, is not permitted once production has commenced, or an order has been placed.
- 20. Privacy Authority**
- 20.1. The Client agrees and authorises TPAGH to make such enquiries as TPAGH deems necessary to obtain from a credit reporting body (**CRB**) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history). The Client further agrees and authorises TPAGH to the extent permitted by law to provide any items of personal information described in the Privacy Act 1988 (Cth) (**PA**) to a CRB and give credit worthiness information about the Client to a person for considering whether to act as a guarantor or to a guarantor.
- 20.2. The parties must each comply with the PA and all other applicable laws and regulations in relation to personal information.
- 21. Unpaid Seller's Rights**
- 21.1 Where the Client has left any item with TPAGH including for repair, modification, exchange or for TPAGH to perform the Service in relation to the item and TPAGH has not received or been tendered the whole of any moneys owing to it by the Client, TPAGH shall have, until all moneys owing to TPAGH are paid:
- 21.1.1 a lien on the item; and
- 21.1.2 the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of TPAGH shall continue despite the commencement of proceedings, or judgment for any moneys owing to TPAGH having been obtained against the Client.
- 22. General**
- 22.1 The failure by TPAGH to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect TPAGH's right to subsequently enforce that provision. 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.
- 22.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of the state of Western Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 22.3 To the extent permitted by law, TPAGH 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 howsoever arising, including out of a breach of these terms and conditions, a tortious or delictual (including negligent) act or omission, in equity, a breach of a statutory duty or obligation, or otherwise (whether or not such loss or damage was foreseeable). The Client indemnifies TPAGH against any claim which may be made against TPAGH by any other person in respect of any matter for which the liability of TPAGH is excluded herewith.
- 22.4 To the extent permitted by law, at all times, TPAGH's total aggregate liability shall be capped at 100% of the Price of the Goods delivered or Services completed by TPAGH.
- 22.4 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 TPAGH nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 TPAGH may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.6 The Client agrees that TPAGH may amend these terms and conditions at any time. If TPAGH makes a change to these terms and conditions, then that change will take effect from the date on which TPAGH notifies the Client of such change in writing. The Client will be taken to have accepted such changes if the Client makes a further request for TPAGH to provide Goods to the Client.
- 22.7 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.
- 22.8 The Client warrants that it has the power to agree and accept these terms and conditions and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.