

1. DEFINITIONS

- 1.1. "Seller"** means Kiely Plumbing Pty Ltd ATF Kiely Plumbing Unit Trust specified on the tax invoice and includes its successors and assigns or any person acting on behalf of and with the written authority of that entity.
- 1.2. "Buyer"** means the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any quotation, work authorisation or other form provided by the Seller to the Buyer.
- 1.3. "Guarantor"** means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4. "Goods"** means goods supplied by the Seller to the Buyer.
- 1.5. "Services"** means all services related to plumbing, roofing and gas fitting supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Site"** means the place or places where the Services are to be carried out by the Seller.
- 1.7. "Terms"** means these terms and conditions.
- 1.8. "Price"** shall mean the price payable for the Goods and/or Services as determined by clause 3 of these terms and conditions.
- 1.9. Schedule of Rates** means the schedule of rates of the Seller..

2. ACCEPTANCE

- 2.1.** The Seller agrees to sell and the Buyer agrees to purchase the Goods subject to these Terms.
- 2.2.** Where more than one Buyer has entered into a contract with the Seller, the Buyers shall be jointly and severally liable for all obligations of the Buyer under this contract.
- 2.3.** By authorising the provisions of the goods or supply of services the buyer accepts these Terms. These Terms are irrevocable and can only be rescinded in accordance with these Terms or with the written consent of the manager of the Seller.

3. PRICE AND PAYMENT

- 3.1.** At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods; or
 - (b) subject to clause 3.2, the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation verbally or in writing within thirty (30) days or otherwise by making payment in cleared funds of the quoted Price.
- 3.2.** The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3.** Any errors or omissions in quantities and / or measurements are accepted, and the Seller reserves the right to make any variations to the quotation, the order and the Price arising out of any such errors or omissions.
- 3.4.** The Seller may request the Buyer pay a deposit in respect of any Goods/Services to be supplied by the Seller.
- 3.5.** Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due within seven (7) days.
- 3.6.** The Buyer agrees to make progress payments as requested. Failure to do so will cancel all further works until such time, progress payments are paid. The Buyer agrees to pay the full invoice amount on the completion of works.
- 3.7.** Payment must be made by cash, cheque, bank cheque, credit card, direct credit, B-Pay or by any other method as agreed to between the Buyer and the Seller. If payment is by credit card, a surcharge of up to 1.5% of the price may be charged to the Buyer. The Buyer gives permission to the Seller to carry out transactions over the phone using the Buyer's credit card details for the value of the invoice amount or as per payment arrangement i.e. deposit or progress payments.
- 3.8.** Prices stated do not include GST and other taxes and duties. These are in addition to the Price except when they are expressly included in the Price.
- 3.9.** Additional fees & charges shall apply outside of normal business hours 7.30am to 4.00pm Monday to Friday.
- 3.10.** If the Buyer fails to make payments in accordance with the invoices or quotes the Seller has the right to cancel any discount otherwise offered to the Buyer.
- 3.11.** In respect of any default or delay in payment the Seller will charge a 2.5% per month compounding finance fee as set out in clause 6.

4. TITLE

- 4.1.** Title to the Goods will not pass to the Buyer until: (a) the Buyer has paid the Seller all amounts owing for the Goods; and (b) the Buyer is not in breach of its obligations under these Terms.
- 4.2.** Receipt by the Seller of non-cash payment from the Buyer will not be deemed to be payment for the Goods until it has been cleared and until then the Seller retains all title to the Goods.
- 4.3.** Until title to the Goods passes to the Buyer: (a) the Seller may give notice in writing to the Buyer to return the Goods to the

Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; (b) the Buyer is a bailee only of the Goods and must hold any proceeds from the sale or disposal of the Goods on trust for the Seller; (c) if the Buyer fails to return the Goods to the Seller as required under clause 4.3(a), the Seller or the Seller's agent may enter land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are and take possession of the Goods.

5. WARRANTY

5.1 Subject to the conditions of warranty set out in Clause 5.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller within three (3) months of the date of delivery (time being of the essence for the purpose of this clause) then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.

5.2 The warranty given by Clause 5.1 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 Buyer to properly maintain any Goods; or
- b) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; 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; or
- f) Any accident or act of God.

5.3 In respect of all claims, the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods in assessing the Buyer's claim.

5.4 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

5.5 No warranty shall be provided on blocked sewer, drainage or storm water as set out in clause 19.

5.6 All serviceable Goods installed by the Seller must be serviced in accordance with the manufacturer's recommendations by the Seller. Failure to do so shall void warranty. It is the sole responsibility of the Buyer to arrange an appointment.

5.7 In cases of roof maintenance and repairs where the Buyer has opted for a temporary solution, the Seller does not provide any warranty in relation to such work. The Seller provides warranty only for roof repairs where the entire roof system has been replaced.

5.8 Nothing in this clauses limits or excludes a Buyer's rights under the Australian Consumer Law as set out under Schedule 2 of the *Competition and Consumer Act 2010* (Ch).

6. DEFAULT & CONSEQUENCES OF DEFAULT

6.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.

6.2. If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees' costs of collection.

6.3. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these Terms. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

6.4. If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

6.5. In any event that:

- (a) Any money payable to the Seller becomes overdue or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) The Buyer 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
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller other remedies at law;

Then:

- (d) The Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

- (e) All amount owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 6.1 hereof.

7. FEES

7.1. Unless agreed otherwise in writing, the Seller will charge the Buyer fees on an hourly basis. The Seller's hourly rates for the Services are stated on the Schedule of Rates which can be accessed via the Seller's website. The Schedule of Rates are subject to change at any time without notice. The Seller's time will be billed at a minimum increment of 15 minutes.

7.2. The Seller may provide verbal or written estimates to the Buyer for the Services via phone, SMS, email or social media based on the description provided by the Buyer. Such estimates are indicative only and not final and are subject to change based on the Seller's on-site review.

7.3. The Seller will charge for travel to and from the site from the Seller's closest office at the nominal hourly rate, for the duration of the Services, for the collection or distribution of materials or phones calls, for the collection or distribution of materials to suppliers or to the business workshop and for any additional costs in the course of providing the Services.

7.4. All fees mentioned in the Schedule of Rates and or quoted are exclusive of GST. The Buyer agrees to pay the Seller the applicable GST.

7.5. Any charges or fees made available on the Seller's website are indicative only and not final.

8. ADDITIONAL COSTS

8.1. The Seller reserves the right to charge the Buyer for any additional costs incurred in retaining any apprentice or assistant for the delivery of Services as determined by the Seller, for hiring any plant and equipment for the Services as determined by the Seller, for materials required for the delivery of the Services, for travelling and procuring materials required for the completion of the Services and for excavation services.

8.2. The Seller will disclose the additional costs in a transparent matter to the Buyer and before incurring them.

8.3. The Buyer agrees to pay the additional costs to the Seller.

9. ADDITIONAL WORK

9.1. If the Buyer requires any additional work which is not included in the scope of work, then the Seller reserves the right to refuse to carry out the additional work.

9.2. If the Seller agrees to carry out the additional work, then the Seller will quote the Buyer for the additional work. The Buyer by accepting the quote for the additional work agrees to pay the Seller the fees for the additional work.

10. LEFTOVERS AND GARBAGE

10.1. The Seller is not responsible for removing or cleaning garbage or debris from the Site if the garbage or debris was not a result of the Seller's activities. The Seller will, however, take responsibility of removing or cleaning garbage or debris that are a result of the Seller's activities.

10.2. The Seller reserves the rights to collect and possess any leftover materials such as copper, brass, metal and the like.

11. TIMEFRAMES

11.1. Any timeframes provided by the Seller in relation to the Services are estimates only and are not binding on the Seller.

11.2. Depending on the Seller's circumstances and priorities, the Seller may cancel or reschedule the Service delivery time without immediate notice.

12. CLIENT INSTRUCTIONS

12.1. The Buyer agrees to provide complete and relevant instructions to the Seller in relation to the Services.

12.2. If the Buyer fails to provide complete and relevant instructions and further Services need to be carried out by the Buyer, then the Seller reserves the right to charge the Buyer additional fees.

13. OTHER BUILDING WORK

13.1 While providing the Services, the Seller may have to alter, amend or modify structures such as wall. If this happens, then the Seller will not be responsible for making good to any damage, alteration, amendment or modification caused to the structure and neither shall it be liable for the damage, alteration, amendment or modification.

13.2. The Buyer bears the responsibility of making good to any damage, alteration, amendment or modification cause to the structure.

14. PHONE RECORDINGS

14.1. For training and quality purposes, the Seller records all incoming phone calls.

14.2. If you do not agree to being recorded, please inform us at the time of calling.

15. CANCELLATION

15.1. The Seller may cancel these Terms or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

15.2. The Buyer must provide the Seller with at least three working days' notice in writing of any cancellation of goods or services.

16. PRIVACY

16.1. The Buyer authorises the Seller to collect, retain and use any information about the Buyer for the purpose of assessing the Buyer's credit worthiness, enforcing any rights under any contract with the Buyer, or marketing any Goods and services provided by the Seller to any other party.

16.2. The Buyer consents to the Seller using the personal information of the Buyer for the purposes of the Seller marketing to the Buyer.

17. BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENTS ACT 2009

17.1. At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.

18. UNDERGROUND SERVICES

18.1. The Buyer will indemnify the Seller and keep the Seller indemnified against any liability, loss, claim or proceedings of any kind (whether arising under statute or common law) arising from services which are buried or unseen being disturbed or damaged. The Seller will not be liable for any repair work and any repair work required will be paid at the Buyer's expense. Such liability, loss, claims or proceedings includes but is not limited to a. Damage to the property, real or personal b. Death or personal injury c. Consequential or economic loss of any kind.

19. DRAINS AND SEWER

19.1. The Buyer understands that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Additionally, the Buyer agrees that the blocked drains, sewer pipes and storm water lines cannot be permanently fixed by simply removing "plant and 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 the other drainage / sewer lines within the same property.

19.2. The Buyer acknowledges that close circuit television (CCTV) is a specialist piece of equipment which may or may not be used at the Seller's sole discretion in an attempt to identify the cause of the blockage. Should CCTV equipment be used the Buyer acknowledges that additional charged will impose.

19.3. Should the Seller's equipment become lodged or damaged in the Buyer's drain it will be removed and/or repaired at the Buyer's expense (including materials, parts and labour).

20. GUARANTEE

20.1. Where there is a Guarantor, the Guarantor guarantees the obligations of the Buyer to the Seller.

20.2. The obligation of the Guarantor is as principal, and the Seller is able to pursue the Guarantor immediately following a breach without having to exhaust all recourse against the Buyer first.

21. INTELLECTUAL PROPERTY RIGHTS

21.1. All Intellectual Property Rights in the materials created by the Seller in the provision of Services will vest with the Seller upon creation and will continue to do so.

21.2. The Seller will grant the Buyer a non-exclusive, non-transferrable, non-shareable, royalty-free, revocable licence in those materials for the purpose of receiving the Services.

21.3. If the Buyer uploads any review, testimonial or feedback regarding the Services, then the Buyer will own all Intellectual Property Rights in that review, testimonial and feedback. However, the Buyer agrees to grant the Seller a non-exclusive, royalty-free, irrevocable, perpetual and shareable licence in the post, testimonial and or feedback for advertising and marketing purposes.

21.4. The Buyer acknowledges that the Seller is free to use the review, testimonial or feedback for marketing and advertising purposes at its will and without any compensation to the Buyer.

22. TESTIMONIALS

22.1. Any testimonials, post or feedback about the Seller and its Services are anecdotal experiences of the uploaders and do not form any type of warranty or guarantee.

22.2. Any reliance on the testimonials, post or feedback is at the sole risk of the Seller.

23. GENERAL

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

23.2. In the event of any breaches of these Terms by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Goods.

23.3. The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller

23.4. The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent. The Buyer may not assign its rights or obligations without the Seller's prior written consent.

23.5. The Seller reserves the right to review and/or amend these Terms at any time.

23.6. The Seller shall not be liable for any default or damage due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of the Seller.

23.7. The failure by the Seller to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.