

# TOP KNOTCH PLUMBING TERMS AND CONDITIONS OF TRADE

## 1. APPLICATION OF THESE TERMS AND CONDITIONS

In this agreement, "the Contractor" is Top Knotch Plumbing Pty Ltd ACN 600 371 140 ATF Ryan Minelle Family Trust ABN 80 190 106 568, trading as Top Knotch Plumbing, its successors or any person acting on behalf of and with the authority of the Contractor; "the Client" is the individual, company or other entity requesting work to be carried out by the Contractor and includes any person acting on behalf of and with the authority of the Contractor; "Equipment" means any equipment brought on site by the Contractor, "Quote/s" means the estimate or preliminary agreement offered to the Client; "Contract" means the agreement entered into and between the Client and the Contractor; "Agent" means anyone employed by the Client to instruct and /or oversee onsite personnel or the running of the Project; "Site" means the address where the Contractor's work is to be carried out; "Work/s" and/or "Project" means plumbing work carried out by the Contractor pursuant to these Terms and Conditions; "Goods" mean plumbing products and associated materials, components and consumables as more particularly described in the Contractor's paperwork and specifications agreed; "Provisional Sum Item" is the Contractor's estimate for materials and labour of a particular part of the Works where the exact cost cannot be determined by the Contractor at the start of the Contract; and "Prime Cost Sum Item" refers to an amount for Works and/or Goods that is to be spent at the instruction of the Client.

## 2. AGENT'S AUTHORITY

Both parties agree that the Agent shall have the Client's full authority to act for the Client in all aspects of the Project, including but not limited to approving variations.

## 3. QUOTES

### 3.1 The Contractor's Quote

The Contractor may give the Client a Quote specifying the Works and Goods required in order to fulfill the Client's requirements and an estimate of the Contractor's charge for such Works and Goods. Work detailed in plans and specifications which are not included in Contractor's Quote will not be carried out by the Contractor.

### 3.2 Acceptance by the Client

3.2.1 Where the Contractor has given the Client a Quote, the Contractor need not commence the Works until the Quote has been accepted by the Client. The Client shall accept the Quote by signing and returning a copy of the Quote accompanied by a purchase order number, if applicable. Acceptance by the Client of the Quote will constitute acceptance by the Client of these Terms and Conditions.

3.2.2 The Contractor's Quote is valid for thirty (30) days only, unless an extension has been authorised by the Contractor.

3.2.3 The Quote is based on the assumption that all Works will be carried out during normal working hours, being 7am to 4pm Monday to Friday.

3.2.4 If the scope of Works alters due to the Client increasing the size of the Project or removing items specified in the Quote, then the Quote will be amended accordingly or a variation request will be submitted by the Contractor and duly authorised by both parties.

### 3.3 Contractor May Revise Quote

The Contractor may amend an unsigned Quote after a period of thirty (30) days to take into account any rise or fall in the cost of performing the Works and the Client shall be notified of such amendment as soon as practicable thereafter. No Work will be carried out until such time as the Client agrees to the amendment of the Quote.

### 3.4 Provisional Sum/Prime Cost Item

Each Provisional Sum Item and Prime Cost Sum Item, if required, will be listed in the Quote and have an allowance stated next to it for the price of the supply of the item. The Client must pay the final price upon completion of the Works. The Client will be charged the actual cost plus a Contractor's margin of twenty percent (20%) for all Provisional Sum Items and Prime Cost Sum Items.

### 3.5 Unforeseen Circumstances

3.5.1 The Contractor shall not be responsible for the condition, failure or noncompliance of any services or elements of any structure at the Site which existed before the Contractor began the Works (latent conditions), whether such elements are visible or not. The repair/rectification work will be charged as a variation to the original Quote. In the event that rectification is required due to health and safety issues the Client will be charged without prior notification as a variation to the original Quote.

3.5.2 Should the Client or the Agent provide architectural plans and/or specifications that subsequently prove to be unworkable or non-compliant with the Building Code of Australia (BCA) then the Client shall indemnify the Contractor from any additional costs, losses or expenses incurred should the Contractor need to rectify the matter as a variation to the original Quote.

3.5.3 If the price for a variation described in 3.5.1 and 3.5.2 is not agreed, the Client will be charged the actual cost plus another twenty percent (20%) plus the Contractor's current office administration fee (price on application to the Contractor's office) for the extra work undertaken, including any investigation costs.

## 4. COST PLUS CONTRACTS

4.1 Should the Client or the Agent be unable to provide complete and adequate information to enable the Contractor to submit a fair and reasonable Quote for a Project, then the Client and/or Agent agrees that any such Quote will be an estimate of costs only and the Project shall proceed on a cost-plus basis.

4.2 Cost Plus Contracts will include a Contractor's margin of twenty percent (20%) plus the Contractor's current office administration fee.

## 5. DO AND CHARGE WORK

5.1 When the Client has requested the Contractor to provide Goods and services to fix a plumbing or associated issue then the Client shall pay the Contractor's hourly rate and call out charges. In addition, the Contractor shall charge the cost of materials, consumables and toll charges (if applicable).

5.2 The hourly rate for 'Do and Charge' Work may change should the Contractor hit a major obstacle including but not limited to solid rock, requiring the hire of special equipment to complete the Work.

## 6. CALL OUT CHARGES

Emergency call outs are subject to an initial charge of one hundred and sixty-five dollars (\$165), then one hundred and sixty dollars (\$160) per hour thereafter. After hours weekdays (after 4pm) and all hours on Saturday and Sunday will be charged at two hundred and fifty dollars (\$250) per hour.

## 7. CLIENT'S RESPONSIBILITIES

7.1 It is the Client's responsibility to be kept informed and updated as to the decisions being made by their Agent throughout the duration of the Project.

7.2 The Client must seek permission before entering the Site so the Contractor may comply with Workplace Health and Safety requirements. Should this protocol not be followed, the Client will indemnify the Contractor from personal injury, losses or expenses incurred.

7.3 The Client acknowledges the suitability and accuracy of documents provided by the Client to the Contractor for specification and guidance on the Project.

## 8. PREFERRED SUBCONTRACTORS

To comply with current Australian Standards and ensure that the Project is completed to an acceptable standard, the Contractor uses a number of preferred subcontractors. The Client acknowledges that this will be the preferred process and will resist introducing other contractors unless otherwise agreed in writing before the start of the Project.

## 9. VARIATIONS

9.1 All requests for variations by the Client or the Client's Agent must be made by text or email directly to the Contractor's office during normal business hours. The Contractor will charge the current office administration fee plus \$150 ex GST irrespective as to the variation being approved or not being approved.

9.2 The Client shall indemnify the Contractor from any additional cost incurred by the Contractor, should the Client increase the scope of the Works and/or Goods to be provided. Proof that the Client can afford the variation may be requested.

9.3 The Client agrees to make no claim against the Contractor for liquidated damages related to delays due to variations requested by the Client.

9.4 If a response to a variation requested by the Contractor has not been received from the Client within two (2) business days, the Contractor will carry out the Works described as part of its Scope of Works. Such variations may result in additional charges to the original Quote and/or Contract as specified in clause 3.5.3.

9.5 Variations within a period subject to a progress payment shall be payable at that time and no later.

## 10. SITE ACCESS

10.1 The Client shall ensure that the Contractor has clear and uninterrupted access to the Site until the Contractor's Works have been completed and the Contractor has been paid in full.

10.2 The Client will indemnify the Contractor from additional costs or penalties if the completion of the Works is delayed due to interrupted Site access.

## 11. POWER AND WATER

The Client shall provide power and water services at the Site to assist the Contractor in carrying out the Works as specified in the Contract. The Client shall indemnify the Contractor for any additional costs, expenses or losses incurred by the Contractor should these services not be made available.

## 12. HITTING ROCK WHEN DIGGING

The Contractor may need to use a digger to complete the Works. In most cases the work is straight forward, but if solid rock is hit a jack hammer will be required to break up the rock. The cost to hire such specialised equipment will be the responsibility of the Client.

## 13. WORK DELAYS

13.1 In the event that Goods, specifications or dimensions to be provided by the Client or a third party prove to be unsuitable, inaccurate or unavailable, resulting in delays to the Works, then the Client shall indemnify the Contractor from liability for any damages (either direct or indirect) for failure to complete the Works in the estimated time.

13.2 In the event that delays occur in the Contractor being provided access to the Site due to reasons beyond the Contractor's control, or that result in the Contractor not being able to undertake the Works in the proposed timeframe, the Contractor has the right to raise a claim to recover any expenses incurred due to such delays.

13.3 The Client shall indemnify the Contractor from costs, losses and expenses caused by late delivery of Goods supplied by the Client.

## 14. SERVICES BELOW THE GROUND

The Client must clearly mark the exact location and identify all services above and below the ground that the Client has initiated at the Site, including but not limited to drains, pipes, sewers, mains and telephone and data cables, to enable the Contractor to prevent damage to all such services. Should the Client fail to provide the Contractor with the location of such services, then the Client shall indemnify the Contractor from any claim for costs, expenses or losses.

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### 15. CLEARING OF BLOCKED DRAIN

**15.1** Simply clearing the blockage does not imply that the cause of the blockage had been rectified. Issues such as faulty joints, broken pipes or foreign objects which have entered the drain can be the reason for the issue. The presence of root growth generally indicates damaged pipes. The damage cannot be rectified by simply removing the root growth or clearing the drain. For that reason, removal of root growth or the blockage alone carries no warranty that similar problems will not occur. Should the drain continue to block, the Contractor will recommend further investigation to determine the cause of the blockage. The Contractor can provide an estimation of the cost of rectification once the cause has been identified and located.

**15.2** Cameras and clearing Equipment may need to be sent through poor quality drains to ascertain what is causing a blockage. The Client agrees to indemnify the Contractor from any costs, losses or expenses for damage to the Contractor's Equipment in the process of such investigative Work.

### 16. ROOF REPAIRS

**16.1** The Client must give the Contractor at least three (3) business days' notice for roof related Work to allow for the hiring of scaffolding and other safety gear.

**16.2** Due to the complexity of roof construction, an isolated "do and charge" or quoted roof repair may not solve the underlying roofing problem and there may be subsequent roofing issues. The Contractor shall only be bound to complete the Work as an agreed 'do and charge', or as previously quoted and agreed on by both parties in the Contract.

**16.3** Any work will be governed by the restraints imposed on the Contractor due to the Client's existing roofing structure and the Client agrees to this assumption.

### 17. PAYMENT AND PAYMENT DEFAULT

#### 17.1 Time for Payment

Unless otherwise agreed in writing, the Contractor's payment terms are seven (7) days from date of the Contractor's tax invoice and payment must be in full.

#### 17.2 Deposit

Unless otherwise agreed in writing the Contractor may require a fifty percent (50%) deposit from the Client. The time for such payment will be specified in the Contractor's Quote and/or Contract. The Client acknowledges the Contractor is under no obligation to start any Works as requested by the Client, until the deposit is received by the Contractor in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Contractor on the part of the Client, the Contractor shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed for in the Contract in addition to any remedy available at law or in equity.

#### 17.3 Progress Payments

When agreed progress payments are not honoured by the Client, the Contractor reserves the right to halt any further Works until such time as the outstanding payment is forthcoming.

#### 17.4 Client's Introduced Tradesman

**17.4.1** The Client agrees that it will not delay any payments to the Contractor should any segment of work to be supplied by a tradesman introduced by the Client or their Agent not be completed for any reason whatsoever.

**17.4.2** Damage caused to the Contractor's Work by the Client's introduced tradesman shall be at the Client's expense.

#### 17.5 Remedial Work

The Client hereby agrees that in the event remedial work is required for the Works completed to date, the Client or the Agent shall only hold back the value/amount (agreed by both parties) of having the work replaced and not the entire due payment. The balance owing must be paid on receipt of the Contractor's tax invoice or payment claim.

#### 17.6 Interest

The Contractor may charge interest at a rate of two percent (2%) per annum above the commercial lending rate of the Contractor's bank calculated on a daily basis on amounts not paid within the time specified in the Contractor's payment claim or tax invoice.

#### 17.7 Damages

The Client must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Client's failure to pay to the Contractor all sums outstanding as owed by the Client to the Contractor including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

#### 17.8 Cancellation

The Client shall reimburse the Contractor for any costs, expenses or losses incurred by the Contractor should the Client cancel an accepted Quote or Contract. The time for payment for such cancellation shall be seven (7) days from the date of the Contractor's tax invoice.

### 18. BCIPA 2004 (QLD)

When appropriate the Contractor may recover all or any invoices submitted under the Building and Construction Industry Payments Act 2004 (Qld) ("BCIPA").

### 19. SCHEDULE OF WARRANTIES

**19.1** To the extent required by the Australian Consumer Law ("ACL"), the Contractor warrants that:

- a) the Works will be carried out in accordance with all relevant laws and legal requirements in an appropriate and skillful way, in accordance with the plans and specifications (where relevant) using Goods that are good and suitable for the purpose for which they are intended to be used and that, unless otherwise stated in the Contract, those Goods will be new;
- b) each provisional sum item allowance, if calculated by the Contractor, has been calculated with reasonable skill and care, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the Site).

**19.2** The Contractor warrants that the Works are, and that Goods supplied are, free of defects at the time of completion and/or installation.

**19.3** Should the Contractor be directed to reuse any materials or components from the Site or elsewhere, then the Contractor will not accept any responsibility for the aesthetic finishes, structural entity or any warranties whatsoever attached to those materials or components. The Client shall indemnify the Contractor from any costs, losses or expenses associated with the rectification or resupply of such materials or components.

**19.4** Subject to the ACL, the Contractor does not have to fix any problem caused by misuse, abuse, wear and tear, normal shrinkage or movement, work done by others or any defects in Goods supplied by the Client.

**19.5** The Contractor will not provide warranty on Goods supplied by the Client.

### 20. DEFECTS

The Client shall inspect the Goods on installation and shall within seven (7) days notify the Contractor in writing (by email or text message) of any alleged defects. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following installation if the Client believes the Goods are defective or fail to match the description in the Quote. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these Terms and Conditions and free from any damage.

### 21. LIABILITY

#### 21.1 Non-Excludable Rights

The parties acknowledge that, under the ACL, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Client in relation to the provision of goods and services which cannot be excluded, restricted or modified by the agreement ("Non-Excludable Rights").

#### 21.2 Disclaimer of Liability

The Contractor disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Client, by statute, the common law, equity, supply, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Excludable Rights.

To the extent permitted by the ACL, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and/or any Works again or payment of the cost of having the Goods and/or Works supplied again.

#### 21.3 Indirect Losses

Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Client for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by a reasonable delay in completing the Works.

#### 21.4 Force Majeure

The Contractor will have no liability to the Client in relation to any loss, damage or expense caused by the Contractor's failure to complete the Works as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Contractor's normal suppliers to supply necessary Goods or any other matter beyond the Contractor's control.

#### 21.5 Contractor's Indemnity

**21.5.1** The Client shall sign off that the Works have been completed at the stages agreed, in accordance with the Contract. After the sign off has been received, the Client shall indemnify the Contractor from any costs or expenses associated with remedial work to damaged Goods.

**21.5.2** Any agreed Client supplied scope of works is to be completed at a time/s agreed by the Contractor, to ensure the Contractor has uninterrupted flow of work.

**21.5.3** If the Client does not adhere to clause 21.5.2, any additional work necessary to provide, supply or install the Goods is a variation and clause 9 will apply. If a price is not agreed, the Client will be charged the Contractor's actual cost plus an additional twenty percent (20%) plus the Contractor's current office administration fee for the extra work undertaken.

### 22. RISK

The risk in the Goods shall pass to the Client upon delivery of the Goods.

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23. RETENTION OF TITLE

23.1 Title

Notwithstanding the delivery and/or installation of the Goods, title in any particular Goods shall remain with the Contractor until the Client has paid and discharged any and all monies owing pursuant to any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on-sold by the Client, the Client will be taken to hold the proceeds of sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds. Any payment made by or on behalf of the Client which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Contractor's title in the Goods nor the Client's indebtedness to the Contractor and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

23.2 Bailment

The Client acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices and progress payments for the Goods are made pursuant to clause 23.1 and until that time:

- a) the Client is not entitled to sell the Goods but only in the ordinary course of business;
b) the Client must not encumber or otherwise charge the Goods; and
c) the Client is fully responsible for any loss or damage to the Goods whatsoever/howsoever caused following delivery of the Goods.

23.3 Repossession

The Client hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any unfixed Goods and sell or dispose of them, and the Contractor shall not be liable to the Client or any person claiming through the Client and the Contractor shall be entitled to retain the proceeds of any Goods sold and apply same towards the Client's indebtedness to the Contractor. If the Client commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Agreement, then the Contractor may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Client on any account which has not been paid in accordance with the Terms and Conditions herein and commence proceedings to recover the balance of any monies owing the Contractor by the Client.

24. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

24.1 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.

24.2 The Client acknowledges and agrees:

- a) that these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
(i) previously supplied by the Contractor to the Client;
(ii) to be supplied in the future by the Contractor to the Client;
b) that the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Goods (supplied now or in the future by the Contractor to the Client) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release;
c) to waive its rights under section 157 of the PPSA and the following subsections of section 115 of the PPSA, which will not apply to the Security Agreement created by these Terms and Conditions: 95, 117, 118, 121(4), 130, 132(4), and 135.

24.3 The Client undertakes to:

- a) keep all Goods free of any charge, lien or Security Interest except as created under these Terms and Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under these Terms and Conditions or the PPSA;
b) sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that the Contractor may require to:
(i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 24.3(b) (i) or 24.3(b) (ii);
c) indemnify, and upon demand reimburse the Contractor for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
(i) registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
(ii) enforcing or attempting to enforce the Security Interest created by these Terms and Conditions;
d) not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of the Contractor; and
e) immediately advise the Contractor of any material change in its business details, including, but not limited to, its trading name, address or business practices.

25. PRIVACY

25.1 The Client hereby authorises the Contractor to collect, retain, record, use and disclose consumer information about the Client's credit worthiness, credit history or credit capacity, in accordance with the Privacy Amendment Act 2012 and the Privacy Principles outlined in the Privacy Amendment Act 2012, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

25.2 The Contractor may give information about the Client to a credit reporting agency for the purposes of obtaining consumer credit reports and/or lodging consumer defaults on the Client's credit file. This information may be given before, during or after the provision of credit to the Client and will be in accordance with the Privacy Act 1988 and subsequent amendments.

26. ARBITRATION AND MEDIATION

Without prejudice to either party's rights under the Building and Construction Industry Payments Act 2004 (Old), either party may refer any dispute under, or arising out of, this contract to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Construction Industry Dispute Resolution Scheme. Each case will first be referred to a Conciliator appointed by the Institute unless each party wishes to proceed directly to arbitration. If the conciliation is not satisfactorily concluded within thirty (30) days or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

27. SECURITY AND CHARGE

The Client reserves the right to charge all property, both equitable and legal, present or future of the Client in respect of any monies that may be owing by the Client to the Contractor under these Terms and Conditions or otherwise and to authorise the Contractor or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Client at any time.

28. GENERAL MATTERS

28.1 Non-Waiver

Failure by the Contractor to enforce or delay in enforcing any right or provision of these Terms and Conditions will not constitute a waiver of such right or provision unless acknowledged and agreed by the Contractor in writing.

28.2 Amendments to these Terms and Conditions

The Contractor reserves the right to vary these Terms and Conditions at any time with fourteen (14) days' notice in writing to the Client. Any subsequent order for work or new Contract will represent the Client's agreement to these Terms and Conditions as amended.

28.3 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down, then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

28.4 Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of the State of Queensland and the laws of the Commonwealth of Australia which are in force in Queensland. All disputes arising between the Client and the Contractor will be submitted to a court of competent jurisdiction in Queensland selected by the Contractor and such court shall possess territorial jurisdiction to hear and determine such proceedings.

CLIENT AGREEMENT TO THESE TERMS AND CONDITIONS OF TRADE
(To be signed by the Client or an authorised signatory of the Client)

FULL NAME (printed) ..... POSITION/TITLE (commercial client) .....

SIGNATURE ..... DATE .....