

WHISTLERS PLUMBING TERMS AND CONDITIONS

Job Details

Whistlers Plumbing will confirm with the Customer the Job details, including the site address and date and time at which the Work is to be performed (**Scheduled Time**). The Scheduled Time is approximate only and Whistlers Plumbing may change the Scheduled Time to another date and/or time, at its discretion. Whistlers Plumbing will notify the Customer of any changes to the Scheduled Time as soon as practicable.

Quote

Whistlers Plumbing may provide the Customer with a Quote. If Whistlers Plumbing provides a Quote to the Customer:

- the Quote will be valid for 14 days from the date of issue;
- Whistlers Plumbing may vary the Quote at any time prior to performance of the Job;
- the Customer will be bound by the Agreement on acceptance of the Quote;
- all hours are quoted in business hours unless after hours is specified in the Quote.

The Customer will be bound by the Agreement on acceptance of the Quote, if applicable, or once Whistlers Plumbing confirms the Scheduled Time with the Customer.

Customer's Obligations

The Customer must give Whistlers Plumbing before the Scheduled Time, reasonable notice of any authorities, checks or other requirements Whistlers Plumbing needs to satisfy before proceeding with the Job and copies of any documents (eg. plans of the Site) that are relevant to the Job and the Work and guidelines or requirements established by the relevant electrical, gas, water, sewerage and/or telecommunications authorities and/or any other person having authority over the Site (**Guidelines**) with which Whistlers Plumbing needs to comply before proceeding with the Job or whilst performing the Work.

The Customer will, at its cost, ensure that the Site is ready for Whistlers Plumbing to perform the Work at the Scheduled Time without any delays. In particular, the Customer must before the Scheduled Time, comply with all Laws, including ensuring a safe working environment that complies with all Occupational Health & Safety requirements to enable Whistlers Plumbing to perform the Job and, if applicable, supply all current (less than 7 days old) Dial Before You Dig documentation for Whistlers Plumbing's use in performing the Job.

Performance of Job

Whistlers Plumbing will only use Materials and Products in accordance with Australian standards. If the Customer wants to supply its own Materials or Products, Whistlers Plumbing reserves the right to refuse to use those Materials or Products at its discretion. If Whistlers Plumbing uses the Customer's Materials or Products, Whistlers Plumbing will not be held responsible for warranty on those Materials or Products.

If the Customer cancels or reschedules the Job, or the Job is delayed or Whistlers Plumbing is prevented from performing the Work due to circumstances beyond Whistlers Plumbing's control, the Customer must pay all costs associated with Whistlers Plumbing attending the Site, including any Revisit Fee(s) along with an amount equal to Whistlers Plumbing's Loss as a result of the delay, including stand down rates until Whistlers Plumbing is able to complete the Job.

Whistlers Plumbing may, at any time, unilaterally and in its absolute discretion, cancel or delay the Job or the Work for any period (eg. due to unforeseen circumstances), by giving written notice to the Customer, without any liability whatsoever and the Customer will not reject performance of the Work at another Scheduled Time.

If Whistlers Plumbing cancels the Job due to the Customer's conduct or failure to do anything the Customer is required to do or at the Customer's request, the Customer agrees to pay Whistlers Plumbing an amount equal to Whistlers Plumbing's Loss as a result of the cancellation of the Job. Whistlers Plumbing will perform the Work at the Scheduled Time in accordance with the Guidelines.

The Customer acknowledges that the Work to be performed, as set out in the Quote or otherwise identified by Whistlers Plumbing prior to performance of the Job, is based on information available at the time of quoting or other relevant time. If additional Work needs to be performed, Whistlers Plumbing will, notify the Customer of the additional Work, additional Fees and Charges and the Scheduled Time for the additional Work and, subject to the Customer's approval, proceed with additional Work at the Scheduled Time.

Reinstatement of any water supply will be carried out with pressure being gradually introduced back into the pipework as well as all air being purged from lines. If a blow-out occurs at this stage of the Work, the Customer will be responsible for the cost of all rectification Work, including additional Fees and Charges payable to Whistlers Plumbing for performing any of the rectification Work.

Fees and Charges and Payment

The Customer must pay the Fees and Charges, including if applicable any additional Fees and Charges for additional Work outside the Quote or identified as being required, on the date(s) set out in the Invoice(s), which may require payment of a deposit with the balance payable on completion of the Job, stage/progress payments or payment on completion of the Job. Payment of Fees and Charges must be made by the Customer to Whistlers Plumbing without deduction, set-off, withholding or counterclaim. The Invoice(s) override(s) the Quote or any purchase order or other document provided by the Customer to Whistlers Plumbing.

Default

If the Customer defaults in payment by the due date of any amount payable to Whistlers Plumbing, fails to comply with the Agreement, becomes Insolvent and/or ceases or threatens to cease carrying on a business, then the Customer will be in default under the Agreement and all money which would become payable by the Customer to Whistlers Plumbing at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Whistlers Plumbing may, without prejudice to any other remedy available to it under the Agreement or at Law or equity do one or more of the following:

- require payment upfront before performing any further Work;
- require that all money owing by the Customer, regardless of the due date, be due and payable;
- charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent, calculated daily, for the period from the due date until the date of payment in full;
- charge the Customer for, and the Customer must indemnify Whistlers Plumbing from, all costs and expenses (including all legal costs and disbursements on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement;
- sue the Customer for breach of contract;
- immediately suspend or terminate the Agreement, by giving notice to the Customer, without effect on the accrued rights of Whistlers Plumbing under the Agreement, at Law or otherwise.

The end of the Agreement (for whatever reason) will not relieve the Customer of its obligations to pay any money due under the Agreement, or affect any provision contained in the Agreement which expressly or by implication is to become operative or continue to operate after the Agreement ends for whatever reason, including any indemnities.

Information and Documents

If Whistlers Plumbing provides any information and/or documents to the Customer which have been prepared and provided by third parties (eg. reports) Whistlers Plumbing is merely passing on the information and/or documents for those third parties and makes no representations as to the accuracy of the information or documents.

Liability

To the extent permitted by Law:

- any advice, recommendation, information or representation provided by Whistlers Plumbing in relation to the Job or the Work is given in good faith but without any liability or responsibility on the part of Whistlers Plumbing. In particular, Whistlers Plumbing takes all reasonable care in locating and marking the location of underground services and/or identifying and locating of defects, however, where work is to be conducted above or near underground services or in any other area marked or identified by Whistlers Plumbing at the Site, it is the Customer's responsibility to visually locate the presence of underground services or verify the absence of underground services by hand excavation or by the use of a non-destructive excavation process prior to the commencement of such work;

- the Customer acknowledges and agrees that it has made its own enquiries regarding the suitability of the Work and the Customer has exercised its own judgment and has not relied on any written or verbal comments, information, warranties, representations or undertakings (financial or otherwise) made by Whistlers Plumbing or anyone acting or purporting to act on behalf of Whistlers Plumbing in deciding to engage Whistlers Plumbing to proceed with the Job;
- all promises, warranties, representations or undertakings (express or implied) are excluded and the Customer must not make any claim against Whistlers Plumbing or anyone acting or purporting to act on behalf of Whistlers Plumbing in respect of any alleged promise, warranty, representation or undertaking (express or implied);
- under no circumstances will Whistlers Plumbing be subject to any liability which exceeds the value of the Work;
- Whistlers Plumbing will be under no liability whatsoever to the Customer or any other person for any Loss howsoever caused (including breach of contract, negligence and/or breach of statute) which may be suffered or incurred by the Customer or any other person from or in connection with:
 - any breach of the Guidelines and/or the Agreement by the Customer;
 - the performance of the Work by Whistlers Plumbing and/or any breach of the Guidelines and/or the Agreement by Whistlers Plumbing;
 - any other contractors or their works at the Site; or
 - the state and condition of the Site, including existing services located at the Site.

The Customer acknowledges the express limitations of liability under this section of these Terms and Conditions and agrees to limit any claims accordingly.

General Provisions

Each of Whistlers Plumbing and the Customer must sign all documents and do all things necessary to perform its obligations under the Agreement as and when required.

Whistlers Plumbing may vary the Agreement at any time by giving notice in writing to the Customer. Any waiver by a party of a term of the Agreement must be in writing and will not constitute a waiver of subsequent breaches of the same or of a different kind. Failure by Whistlers Plumbing to enforce any term of the Agreement will not be construed as a waiver of any of Whistlers Plumbing's rights. The Agreement is governed by the laws of State of Victoria and the parties submit to the jurisdiction of the Courts of that State and Courts competent to hear appeals from those Courts.

The Customer indemnifies Whistlers Plumbing from and against any Loss suffered by Whistlers Plumbing as a result of the Customer's breach of the Guidelines and/or the Agreement.

No agent, employee, contractor or representative of Whistlers Plumbing will have any authority whatsoever to bind Whistlers Plumbing to any affirmation, representation, warranty or condition concerning the Job or Work to be performed under the Agreement unless such affirmation, representation, warranty or condition is specifically included in writing within the Agreement.

Definitions and Interpretation

In the Agreement unless the context otherwise requires:

• **"Agreement"** means the agreement between Whistlers Plumbing and the Customer as set out in these Terms and Conditions (as varied under these Terms and Conditions), the Invoice(s), the Quote(s) and any other documents as agreed between Whistlers Plumbing and the Customer in writing from time to time and if there is any inconsistency between these documents, the documents will be interpreted in the order of precedence in which they appear in this definition and otherwise the higher standard or obligation will prevail;

• **"Business Day"** means any day except Saturday, Sunday or a public holiday in the State or City in which the Site is located;

• **"Customer"** means the person, firm or corporation for whom Whistlers Plumbing has agreed to perform the Work;

• **"GST"** means the Goods and Services tax as defined in *A New Tax Goods (Goods and Services Tax) Act 1999*;

• **"Invoice"** means an invoice issued by Whistlers Plumbing to the Customer, setting out the Work performed by Whistlers Plumbing for the Customer and the Fees and Charges payable by the Customer to Whistlers Plumbing for that Work;

• **"Insolvent"** means where the Customer is "insolvent" within the meaning of section 95A of the *Corporations Act 2001 (Cth)* and/or in Whistlers Plumbing's reasonable opinion, unable to pay its debts when due;

• **"Job"** means the Work to be performed by Whistlers Plumbing for the Customer at the Scheduled Time, as varied under these Terms and Conditions;

• **"Law(s)"** means all legislation, regulations, by-laws, codes of practice and other industry standards and government requirements which relate to the performance of the Work;

• **"Loss"** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, contingent, punitive, consequential or incidental) including legal costs and expenses on a full indemnity basis;

• **"Fees and Charges"** means the amounts payable by the Customer to Whistlers Plumbing for the Work performed, as varied under these Terms and Conditions (e.g. to cover additional Work) inclusive of GST, labour, Materials and Products;

• **"Materials"** means the materials used by Whistlers Plumbing in the performance of the Work;

• **"Products"** means products used by Whistlers Plumbing in the performance of the Work;

• **"Quote"** means the formal quote provided by Whistlers Plumbing to the Customer for the Job;

• **"Revisit Fee"** means the amount determined by Whistlers Plumbing to cover its costs in having to visit the Site again to perform the Job or the Work, which is payable by the Customer to Whistlers Plumbing if, on the Scheduled Date (as varied under these Terms and Conditions), the Job is delayed or Whistlers Plumbing is prevented from performing the Work due to circumstances beyond Whistlers Plumbing's control.

• **"Services"** means the services to be performed by Whistlers Plumbing for the Customer under the Agreement, details of which are set out in the Invoice(s);

• **"Site"** means the site at which the Work is to be performed, as notified by the Customer to Whistlers Plumbing before the Scheduled Date;

• **"Terms and Conditions"** means these Terms and Conditions, as varied under these Terms and Conditions;

• **"Whistlers Plumbing"** means Whistlers Plumbing Services Pty Ltd ACN 168 142 612 of 21 Caravan Street, Balwyn, Victoria, 3103 and includes any director, officer, servant, agent, partner, contractor or employee of Whistlers Plumbing, as applicable;

• **"Work"** means the supply of Products and provision of Services as required for the Job, including any additional Work;

• words importing the singular include the plural and vice versa;

• words importing persons include corporations, all bodies and associations corporate or unincorporate and vice versa and includes their heirs, successors, permitted assigns and assigns (whichever applies);

• any agreement, warranty, representation, obligation or liability which binds or benefits 2 or more persons under the Agreement binds or benefits those persons jointly and severally;

• any reference to a statute or statutory provision includes any statutory provision which amends, extends, consolidates or replaces or has been amended, extended, consolidated or replaced by, that statute or statutory provision and any other orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

• any reference to any thing or amount is a reference to the whole and/or each part of it;

• any reference to "includes" or "including" means "includes without limitation" and "including without limitation";

• examples in the Agreement are descriptive only and are not intended to be exhaustive;

• where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day; and

• a provision of the Agreement which has the effect of requiring anything to be done on or by a date which is not a Business Day must be interpreted as if it requires it to be done on or by the next Business Day.