

WA DASH PLUMBING AND GAS
TERMS AND CONDITIONS

1 DEFINITIONS

In this document:

- 1.1 **“Agreement”** means any contract or agreement, whether formal or informal, written, oral or partly written and partly oral, formed between the Client and the Company, including but not limited to by way of a Request for Service issued by the Client and an Authorisation issued by the Company, or by way of the Client’s acceptance of a Quote issued by the Company.
- 1.2 **“Authorisation”** means an authorisation issued to the Client by the Company.
- 1.3 **“Company”** means Henson WA Pty Ltd, trading as WA Dash Plumbing and Gas.
- 1.4 **“Client”** means the individual, business, partnership or company entering into an Agreement with the Company and includes that company’s successors and assigns.
- 1.5 **“Goods”** means any goods hired or purchased by the Client pursuant to an Agreement.
- 1.6 **“Goods and/or Services”** means any products and/or services supplied by the Company to the Client pursuant to the Agreement.
- 1.7 **“Notice”** means a notice in accordance with clause 17.
- 1.8 **“Party”** means each party to an Agreement, including the Company and the Client, and **“Parties”** has a corresponding meaning.
- 1.9 **“Price”** has the meaning stated in clause 4 and is subject to clause 15.
- 1.10 **“Quote”** means a quote issued to the Client by the Company.
- 1.11 **“Request for Service”** means a request for service issued to the Company by the Client.
- 1.12 **“Service”** means the provision of any service by the Company to the Client pursuant to an Agreement.
- 1.13 **“Works”** means the Company’s provision of Goods and/or Services pursuant to the Agreement.

2 OPERATION

- 2.1 The Agreement between the Client and the Company shall be upon these Terms and Conditions and shall be read in conjunction with these Terms and Conditions.
- 2.2 These Terms and Conditions shall operate to the exclusion of any terms and conditions to the contrary effect expressed in any of the Company’s quotations or other communication or documentation and shall supersede all prior Agreements.
- 2.3 From time to time, the Company may review and amend these Terms and Conditions of the Agreement and the Client shall be bound by any variation which shall apply to the supply of any of the Works following the effective date of the variation.

3 QUOTATIONS

- 3.1 Any quotations do not involve any obligations by the Company.
- 3.2 Quotations shall lapse without notice to the Client after 30 days from their date of issue by the Company.

4 PRICE

- 4.1 The Client shall pay to the Company the Price specified on the Authorisation, Quote, order, or invoice dispatched by the Company plus all taxes, credit card fees, freight, handling, delivery and insurance charges by the Company in respect of the Goods and/or Services (**“the Price”**).

4.2 The Company may, at any time before the delivery of the Goods and/or Services, provide written notice to the Client to increase the Price to reflect any increase in the cost to the Company due to a factor beyond the control of the Company including (but without limiting in any way the generality thereof) water, flood, fire, storm tempest, rioting, earthquake, civil commotion or industrial action, any change of delivery dates, quantities or specifications for the Services requested by the Client, any delay caused by the Client, or any variation to the Works or the Agreement pursuant to clause 15.

5 PAYMENT

5.1 The Client agrees to pay the Price for the Goods and/or Services in accordance with these Terms and Conditions.

5.2 Time of payment is of the essence of the Agreement.

5.3 Unless otherwise agreed in writing by the Parties, the Client must pay the Price in accordance with the payment terms set out in the Authorisation or Quote.

5.4 Where the Client has provided details of a debit or credit card for payment to the Company in the Agreement or Request for Services, the Client agrees and authorises the Company to charge or make deductions from the debit or credit card to satisfy the Price or any part of the Price for the Services at any time without notice to the Client.

5.5 The Client warrants that it shall ensure that its nominated debit or credit card in the Agreement has sufficient clear funds available to pay the Price or any part of the Price when due to the Company under the Agreement.

5.6 The Company shall be entitled to charge the Client interest calculated at 12% per annum, on the balance of all overdue accounts and invoices from the date of due payment until the date of actual payment.

6 COSTS RECOVERABLE

6.1 Should the Client default in the payment of any monies due under any Agreement, then all monies due to the Company shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand.

6.2 The Client shall pay on an indemnity basis all expenses, costs and disbursements, including debt collection agency fees, commission and any fees paid to the Company's solicitors (on an indemnity basis) incurred by the Company or its appointed agents in recovering payment of any outstanding monies, enforcing its rights under the Agreement, or in investigating or defending any action or threatened actions.

6.3 Where the Client is a company, the Client's Directors personally guarantee the payment of all costs and expenses owing to the Company by the Client.

6.4 The Client hereby charges and mortgages in favour of the Company to secure the repayment of any debt and any monies which may become owed by the Client to the Company hereunder and under any Agreement all of the Client's present and future estate and interest in all real property and personal property.

7 RETENTION OF TITLE

7.1 Prior to full payment of the Price and all other sums owing by the Client to the Company in relation to the supply of Goods and/or Services, the Client shall have no right to sell or dispose of any or all of the Goods and/or Services.

7.2 The parties agree that the title of any Goods and/or Services supplied by the Company shall not pass to the Client until payment for those items and any associated labour has been received in full by the Company.

7.3 Where any part of the Price for Goods and/or Services supplied by the Company remains owing, the Company shall retain legal title to all Goods and/or Services supplied and not yet used or resold in the ordinary course of business.

7.4 When such Goods and/or Services are used, even with loss of identity, the legal title to the resultant goods and/or resultant services shall vest in the Company. The proceeds of the sale of the Goods

and/or Services or resultant goods and/or resultant services shall be received by the Client as agent of the Company and such proceeds are to be kept in a separate account or are to be accounted for on demand.

- 7.5 Prior to payment being received in full by the Company, the Client will take custody of the Goods and/or Services and retain them as the fiduciary agent and bailee of the Company.
- 7.6 The Client agrees to indemnify the Company against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Company suffers, incurs or is liable to pay in respect of the Company's exercise of its rights under clause 7.
- 7.7 The Client acknowledges and agrees that all rights in all copyright, designs, patents and trademarks existing in relation to the Goods and/or Services are reserved to the owner of those rights.

8 COMPLETION, DELAYS AND EXTENSION OF TIME

- 8.1 Any time or date named and accepted by the Company, including in the Authorisation or Quote, for completion, delivery, dispatch, or arrival of the Works, Services and/or Goods or is an estimate only and does not constitute a condition of the Agreement or part of the description of the services and is not of the essence of the Agreement.
- 8.2 Should the Works or the progress of the Works be delayed by any of the following causes or conditions resulting therefrom:
 - 8.2.1 The Company not having uninhibited access to carry out the Works pursuant to clause 12.1;
 - 8.2.2 On account of variations;
 - 8.2.3 By inclement weather or conditions resulting from inclement weather;
 - 8.2.4 By reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works or affecting the manufacture or supply of materials for the Works;
 - 8.2.5 Any act, default or omission on the part of the Client;
 - 8.2.6 Delay on the part of any local or other authority in granting or issuing any necessary consent or approval;
 - 8.2.7 By any other matter, cause or thing whatsoever beyond the control of the Company including unavailability of labour or materials;

then in any such case, the Company shall be entitled to a fair and reasonable extension of time in which to complete the Works without notice to the Client.

- 8.3 When the Client becomes aware of any matters that are likely to result in a delay to the Works, the Client is to notify the Company in writing of the nature and estimated extent of the delay.
- 8.4 Upon receipt of the Client's notice above, the Company will notify the Client of the estimated impact of the delay on:
 - 8.4.1 The time for completion of the Works; and
 - 8.4.2 The estimated extra costs associated with the delay.
- 8.5 The Client shall pay for the Company's extra costs and fees necessarily incurred by reason of any delay or extension of time.

9 FORCE MAJEURE

- 9.1 The Company will not be liable for any breach of the Agreement due to any matter or thing beyond the Company's control. Furthermore, the Company is excused from performing any term, covenant or condition required by the Agreement during the time and to the extent that performance is prevented when such performance is prevented wholly or in part by circumstances beyond the Company's control.

10 DEFECTS

- 10.1 If the Client believes that the Goods and/or Services are not in accordance with the Agreement or are malfunctioning the Client must give notice of the defect to the Company within 24 hours of delivery of the Goods and/or Services.
- 10.2 The Company shall not be responsible or liable for any alleged defect of the Goods and/or Services unless it is reported in accordance with clause 10.1.
- 10.3 The Client must allow a representative of the Company (including a third party engaged by the Company) the rights to inspect any alleged defect of the Goods and/or Services.

11 NO WARRANTY MADE BY THE COMPANY

- 11.1 The Company makes no express warranties to the Client, except those expressly set out in the Agreement and these Terms and Conditions.
- 11.2 The Parties acknowledge and agree that:
 - 11.2.1 any prior representations, agreements and arrangements, including representations as to the suitability of the Goods and/or Services;
 - 11.2.2 any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure; and
 - 11.2.3 all express and implied warranties, guaranties and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods and/or Services for any purpose or as to design, assembly, installation, material or workmanship or otherwise, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void;

are expressly excluded from, and do not form part of, the Agreement unless specifically stated in the Agreement to the contrary.

12 THE CLIENT'S WARRANTIES

- 12.1 The Client warrants that the Company and the Company's representatives, servants, agents, employees and contractors have full and uninhibited access to any site or property that is the subject of the Agreement to carry out the Works.
- 12.2 The Client has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by the Company or anyone on its behalf in respect of the services, other than those that are expressly contained in the Agreement.
- 12.3 The Client warrants that the Company is not responsible for the clean-up of the site or property at which the Services are performed.

13 NO LIABILITY FOR ADVICE OR THIRD-PARTY GOODS/SERVICES

- 13.1 The Company is only liable for expert advice which is within the scope of the Agreement, in writing, and accompanied by a written confirmation stating that the Company is qualified to give the advice.
- 13.2 The Client acknowledges that the Company is not able to provide expert advice outside the scope of the Agreement.
- 13.3 The Company is not liable for any advice or assistance given in good faith, but which it is not contractually bound to provide, and which does not fit the criteria set out in clause 13.1.
- 13.4 The Client acknowledges and agrees that the Company is not liable for:
 - 13.4.1 any damage or defects attributable to the provision of services by a third party; or
 - 13.4.2 any defects attributable to the manufacture of any Goods that are manufactured by third parties and hired by the Client.

14 LIABILITY AND INDEMNITY

- 14.1 The Company shall not be liable to the Client or any other party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or

for any claim for loss of profits, and the Client agrees that the Company may plead these Terms and Conditions as a bar to any such claims whether they arise at law, in equity, under any statute, regulation, or other legislative instrument, or under any contract, deed, or any other instrument made or approved under any law.

- 14.2 The Client hereby releases and indemnifies and agrees to keep the Company indemnified from any and all costs (including all legal fees and costs) and any other legal or other expenses incurred by it in investigating or defending any action or threatened actions on an indemnity basis), damages, liabilities, penalties, fines, expenses or losses including indirect, incidental, consequential, punitive or exemplary loss or damage (including but not limited to loss of profit), whether resulting from breach of contract, tort, warranty, strict liability, statute or any other legal theory or otherwise that the Company may incur in relation to the Client or any third party, including where the cost, damage, liability, penalty, fine, expense or loss is caused by or contributed to by the Company in any way or for any reason whatsoever.
- 14.3 The Client assumes all risks and liabilities for and in respect of the Goods and/or Services and for all injuries to or deaths of persons and any damage to property howsoever arising from the Client's possession, use, maintenance, repair or storage of the Goods and/or Services.

15 VARIATIONS

- 15.1 Any variation to the Works or the Agreement must be in agreed to in writing between a representative of the Company and of the Client, confirming the:
- 15.1.1 precise scope of the variation; and
 - 15.1.2 the amount or means of calculating the amount that the Client is to pay the Company for the variation; and
 - 15.1.3 any change to the Price as a result of the variation.
- 15.2 The Client agrees that the Company may revise and amend the Price of the Works if there are any such variations.

16 BREACH AND TERMINATION

- 16.1 If the Client defaults in the due and punctual observe of all or any of its obligations or covenants under the Agreement or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then the Company may without prejudice to any other right or remedies it has:
- 16.1.1 treat as discharged all or any obligation arising from any Agreement;
 - 16.1.2 retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to the Company; and
 - 16.1.3 take such steps as the Company may deem necessary in its sole discretion to mitigate its damages suffered including the putting to use, sale or disposal of any Goods under the Agreement.
- 16.2 In addition to any other rights under the Agreement, the Company may terminate the Agreement by notice in writing to the Client immediately upon any one of the following events:
- 16.2.1 Any deliberate and substantial prevention of or interference with the delivery, installation, or dismantling of the Goods or the Works or progress thereof caused by the Client whether directly or indirectly;
 - 16.2.2 Substantial damage to or interference with the Works or access thereto by any cause beyond the control of the Company including (but without limiting in any way the generality thereof) water, flood, fire, storm tempest, rioting, earthquake, civil commotion or industrial action;
 - 16.2.3 Any substantial breach of the Agreement or these Terms and Conditions by the Client;
 - 16.2.4 If the Client shall make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Client's estate;

16.2.5 Any failure by the Client for 7 days after the due date hereof to pay any part of the Price.

16.3 If the Agreement is terminated, the Client shall pay the Company for all Services and/or Goods provided by the Company, all work done by the Company, and all Goods or materials used or procured by the Company and properly chargeable to the date of termination.

17 NOTICES

17.1 A party must give any notice required under these Terms and Conditions or the Agreement in accordance with this clause 17.

17.2 A notice must be served at the address or electronic mail address of the party set out in the Agreement.

17.3 A party may deliver a notice by hand, post, or by electronic mail.

17.4 If before 4 pm local time in the place of delivery, a party delivers a notice by hand or by electronic mail and the sending party completes the transmission the notice will be taken to be given on the day of delivery or transmission, and in any other case on the next day. If the party gives notice by post the notice will be taken as given on the 7th day in the place of delivery after the notice is posted.

17.5 A party may give notice of another address (within Australia) or an electronic mail address for service to the other party, and the new address or the electronic mail address shall be the address for service of the party for the purposes of this clause.

18 MISCELLANEOUS

18.1 The Company may assign, sub-contract or sub-let the whole or any part of the Works or the Client's obligations under a Agreement, without seeking the consent of the Client.

18.2 The Client may not assign, sub-contract or sub-let any part of the Works, or any of its rights, liabilities, or obligations under any Agreement, without the prior written consent of the Company.

18.3 The covenants, agreements and obligations contained in any Agreement and these Terms and Conditions will not merge or terminate upon the repudiation or termination of the Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

18.4 Any waiver by the Company must be in writing signed by the Company. Failure by the Company to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.

18.5 If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms and Conditions are not affected.

18.6 These Terms and Conditions and the Agreement are governed and are to be construed in accordance with the laws in force in the State of Western Australia.

18.7 These Terms and Conditions and the Agreement are subject to the exclusive jurisdiction of the Courts of Western Australia.

19 INTERPRETATION

19.1 In these Terms and Conditions, unless the context otherwise requires:

19.1.1 the singular includes the plural and vice versa;

19.1.2 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

19.1.3 a reference to a clause is to a clause of these Terms and Conditions;

19.1.4 a reference to a body, other than a Party to the Agreement (including, without limitation, an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

19.1.5 if a party comprises two or more persons, the covenants and Agreements on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;

19.1.6 reference to a party includes its executors, administrators, successors and permitted assigns;

- 19.1.7 no provision of these Terms and Conditions will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms and Conditions or that provision;
- 19.1.8 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 19.1.9 all references to A\$, \$, dollar, \$, or to currency are references to Australian dollars;
- 19.1.10 "including" and similar expressions are not and must not be treated as words of limitation; and
- 19.1.11 headings are for ease of reference only and do not affect the meaning of these Terms and Conditions.

20 RECEIPT AND ADVICE

- 20.1 The Client hereby acknowledges receipt of these Terms and Conditions and agree to be bound by them. The Client accepts these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Client further acknowledges that it has had the opportunity of obtaining independent legal advice and that the Client understands the Terms and Conditions outlined above.