

Standard Terms and Conditions of Trade

1. **DEFINITIONS & INTERPRETATION**

- 1.1 “ADI” means authorised deposit-taking institution and has the same meaning as in the Banking Act 1959;
- 1.2 “Agreement” includes any agreement for the supply of Goods and/or Services by VP to the Client pursuant to these Terms and Conditions;
- 1.3 “Client” means the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by VP to the Client (including builders, head contractors, subcontractors);
- 1.4 “Defect” means a failure to perform the Services in a proper and workmanlike manner and in accordance with this Agreement or to supply goods or materials that are not of merchantable quality and reasonably fit for the Client’s purpose;
- 1.5 “Goods” means any goods (including but not limited to plumbing goods and associated parts) or products supplied by VP (including goods that VP purchases from third parties) to the Client (and where the context so permits shall include any supply of Services) and are as described on the Purchase Order(s), Quotation or Invoice(s);
- 1.6 “Guarantor” means that person (or persons) or entity who agrees to be liable for the debts of the Client on a principal debtor basis pursuant to the Agreement;
- 1.7 “Intellectual Property” includes but is not limited to all trade marks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by VP. These rights include but are not limited to:
- (i) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
 - (ii) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, trade secrets or data whether or not protectable by patent application design registration, copyright, or otherwise, whether unregistered, registered or registrable.
- 1.8 “Intellectual Property Rights” means all present and future rights conferred by statute, common law or equity anywhere in the world in or in relation to copyright, trade marks, designs, patents, methodology, concepts, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:
- (i) all rights in all applications to register these rights including all rights to claim Paris Convention priority;
 - (ii) all renewals and extensions of these rights; and
 - (iii) all rights in the nature of these rights, such as moral rights.
- 1.9 “Invoice” means a taxation invoice for the Services and/or Goods supplied by VP to the Client;
- 1.10 “Loss” means:
- (i) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
 - (ii) liability;

- (iii) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
 - (iv) cost or expense including legal costs on a full indemnity basis;
- 1.11 "Party(ies)" means the parties to the Agreement including but not limited to VP and the Client;
- 1.12 "Personal Property Securities Act" means the Personal Property Securities Act (Cth) 2009, as amended from time to time;
- 1.13 "Price" means the price payable for the Services specified in the Invoice in accordance with Clause 6 of this contract;
- 1.14 "Purchase Order" means an order request for Goods and/or Services by the Client to VP;
- 1.15 "Quotation" means any quotation or proposal for the Services;
- 1.16 "Security Agreement", "Commingled Goods", "Accession", "Financing Statement", "Financing Change Statement", "Personal Property", "All Present and After Acquired Personal Property", "Purchase Money Security Interest", "PPSR", "Registration" and "Security Interest" have the meanings given to them in the Personal Property Securities Act;
- 1.17 "Services" means all services requested and supplied by VP to the Client, including any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above) and as specified in the Quotation, Purchase Order(s), Invoice(s) or in any other written communications;
- 1.18 "Site" means the location where the Services are provided or any site where VP is required to carry out any works;
- 1.19 "Terms and Condition" means these terms and conditions of VP's supply of Services to the Client pursuant to the Agreement;
- 1.20 "VP" means Ryan and Melissa Pty Ltd (ACN 152 339 529) as trustee for the Vivian Plumbing Family Trust trading as 'Vivian Plumbing' and include without limitation its officers, agents, sub-contractors, successors and assigns or

any person acting on behalf of and with the authority of Ryan and Melissa Pty Ltd;

1.21 In interpreting these Terms and Conditions:

- (a) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) any obligation on the part of two (2) or more persons or entities binds them jointly and severally;
- (c) words in the singular number include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes a partnership and a body, whether corporate or otherwise;
- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (g) a reference to a Schedule includes a reference to any part of that Schedule which is not physically annexed to these Terms and Conditions but which is incorporated by reference;
- (h) monetary references are references to Australian dollar currency ("AUD"); and
- (i) in the interpretation of these Terms and Condition, no rule of contract interpretation applies to the disadvantage of a Party on the basis that it put forward these Terms and Conditions or any part of them.

2. APPLICATION OF TERMS AND CONDITIONS

2.1 The Client wishes to engage VP for the purposes of supplying the Client with the Services in accordance to these Terms and Conditions.

3. QUOTATION

3.1 Upon receipt of the Customer's requirements, VP will provide a written quotation ("Quotation") to the Client within a reasonable time.

- 3.2 The Quotation is valid for thirty (30) days. If the Client accepts the Quotation after the sixty (60) days, the Price in the Quotation may be revised at VP's sole discretion.
- 3.3 Where architectural drawings or any other specifications provided by the Client are not complete or accurate, the Price as indicated in the Quotation are estimates only and may be subject to revision by VP.

4. PURCHASE ORDER

4.1 Purchase Orders

- (a) The Client will provide VP with a Purchase Order for the supply of the Services.
- (b) The Purchase Order will be in writing and shall refer to VP's quotation number. The Purchase Order will specify:
- (i) the type of Services required;
 - (ii) proposed time of delivery and/or installation; and
 - (iii) a delivery address (or place of installation).
- (c) VP will endeavour to notify the Client of the following within three to five business days from the date of receipt of the Purchase Order:
- (i) confirmation that VP has received the Purchase Order;
 - (ii) whether VP reasonably believes that the Goods and/or Services can be supplied and whether VP can meet the Client's requirements; and
 - (iii) whether VP accepts the Purchase Order.
- (d) A Purchase Order cannot be revoked by either Party without the prior written consent of the other Party.

5. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 5.1 Any instructions received by VP from the Client in relation to the following:

- (a) acceptance of the Quotation;
- (b) provision of the Purchase Order to VP;
- (c) supply of the Services;
- (d) the Client and VP sign the Agreement; or
- (e) the Client's acceptance of the Goods supplied by VP,

will constitute acceptance of these Terms and Conditions.

- 5.2 Where more than one Client has entered into this Agreement, the Clients shall be jointly and severally liable for all payments of the Price.

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

6. PRICE AND PAYMENT

- 6.1 At VP's sole discretion the Price is either:
- (a) as indicated on VP's Invoices provided; or
 - (b) as indicated in the Quotation (or revised from time to time in accordance with these Terms and Conditions) which shall be binding upon VP provided that the Client accepts VP's Quotation in writing within thirty (30) days from the date of the Quotation.
- 6.2 VP reserves the right to change the Price in the event of a variation to the Quotation, provided that VP provides the Client with reasonable notice of the change in the Price. The costs of variations are to be borne by the Client, unless otherwise agreed by VP.
- 6.3 All Prices are quoted based on the Client's original requirements. If the Client wishes to change or revise its requirements or the scope of services/works at any stage, VP reserves the right to revise the original Quotation. If the Client does not accept the revised Quotation, VP is only obliged to provide the Services as agreed and

particularised in the original Quotation. The Quotation also does not take into account any impediment or difficulty presented by the terrain or the Site and any additional costs incurred by VP will be added to the Price.

- 6.4 If VP hits a major obstacle including but not limited to solid rock, requiring the hire of special equipment and if necessary a subcontractor to complete the work, the Client shall be responsible for all costs and expenses associated with such a hire and any applicable hourly rate of VP.
- 6.5 Subject to clause 6.6, invoices must be paid in full within fourteen (14) days from the date of the invoice, provided always that all payments must be made on completion of the Services. If VP has approved the Client's credit account, then the time for payment of Goods shall be within thirty (30) days from the date of the invoice and time shall be of the essence.
- 6.6 For individual clients of the Plumbing & Maintenance Division, payments must be made prior to or when the Goods or Services are delivered.
- 6.7 Payment can be made by cash, credit card, cheque or by EFT transfer to VP's account (refer to the invoice for the account details). If payment is made by EFT, the Client must provide a reference (invoice number and/or name of Customer).
- 6.8 GST and other taxes and duties that may be applicable will be shown separately and are not included in the Price.

7. DEFECTS IN SITE OR EXISTING INSTALLATION

- 7.1 If VP in the course of supplying the Services discovers any defect in any part of the Site, existing installations or connections ("Latent Defect") which makes it impracticable, impossible or inexpedient for VP (in its sole judgement) to continue the Services without rectifying the Latent Defect, VP will suspend the Services and notify the Client. VP will provide the Client with a quotation for carrying the rectification (or any additional work).
- 7.2 If the Client does not consent to the additional works or the Quotation, VP will be entitled to terminate this Agreement and all payments to VP shall become immediately due.

8. RISK, TITLE AND THE PERSONAL PROPERTY SECURITIES ACT

- 8.1 Goods supplied by VP to the Client will be at the Client's risk upon
- (a) delivery to the Client; or
 - (b) delivery to the Client's custody, possession or control,
- whichever is the sooner.
- 8.2 Ownership of the Goods remains with VP (despite the Client having possession of the Goods or the Client parting possession with VP's Goods to another person for example, the Client hands over the property to the property owner before paying VP's invoices in full) until all the amounts owing by the Client to VP (including without limitation to the Price and other debts owing to VP) have been paid in full.
- 8.3 The Client acknowledges that this Agreement and these Terms and Conditions constitute a Security Agreement which creates (or may create) a Security Interest in favour of VP in all Present and After Acquired Personal Property supplied to the Client by VP to secure the payment from time to time. The Client agrees to grant to VP a Purchase Money Security Interest.
- 8.4 The Client accepts, acknowledges and agrees that:
- (a) VP obtains a Security Interest in all Goods supplied by VP to the Client (including if the Goods become any Commingled Goods or Accessions to other goods);
 - (b) VP can, without notice to the Client, affect and maintain a Registration (in any manner that VP considers appropriate) of its Security Interest on the PPSR in relation to any security interest contemplated or constituted by the Agreement including but not limited to VP's Goods, Services, contract rights or Intellectual Property; and
 - (c) Pursuant to section 275(6) of the PPSA, the Client agrees VP is not required to disclose to an interested person information pertaining to VP's Security Interest unless required to do so pursuant to the PPSA or at law generally.

8.5 The Client will:

- (a) sign any documents and/or provide any further information (which information the Client warrants to be complete, accurate and up-to-date in all respects) and/or assistance which VP may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
- (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any Services, without the prior written consent of VP;
- (c) give VP not less than 14 days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business activities);
- (d) indemnify VP against any costs VP incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs VP may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;
- (e) procure from any persons considered by VP to be relevant to its security position, such agreement and waivers as VP may at any time reasonably require.

8.6 The Client undertakes to:

- (a) not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement without VP's prior written consent;
- (b) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without VP's prior written consent.

8.7 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these terms and conditions apply, the Client agrees that the following provisions of the PPSA will not apply to the enforcement of the Agreement:

- (a) Section 95 (notice of removal of accession), to the extent that it requires VP to give a notice to the Client;
- (b) Section 96 (when a person with an interest in the whole may retain an accession);
- (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (d) Section 125 (obligation to dispose of or retain collateral);
- (e) Section 129 (disposal by purchase);
- (f) Section 130 (notice of disposal of collateral), to the extent that it requires VP to give a notice to the Client;
- (g) Section 132(3)(d) (contents of statement of account after disposal);
- (h) Section 132(4) (statement of account if no disposal);
- (i) Section 135 (notice of retention of collateral);
- (j) Section 142 (redemption of collateral); and
- (k) Section 143 (reinstatement of security agreement).

8.8 Notices or documents required or permitted to be given to VP for the purposes of the PPSA must be given in accordance with the PPSA.

8.9 The Client acknowledges that it may be in possession of the Goods (or part of) as bailee until payments of all Invoices have been made in accordance with clause 6 and until that time:

- (a) the Client must not (or permit another person to) encumber or otherwise charge or register a Security Interest in the Goods; and

(b) the Client will be responsible for any loss or damage to the Goods whatsoever and howsoever caused following VP's delivery of the Goods or the completion of the Services.

(v) the repair of such Goods;
(vi) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
or

9. CLIENT'S WAIVER

9.1 Subject to clause 9.3, the Client warrants that it has not relied on any representation made by VP (including its employees, agents or subcontractors) in any form (including but not limited to VP's marketing materials or website) which has not been stated expressly in these Terms and Conditions or upon any descriptions, illustrations or specifications or any documentation provided by VP.

9.2 The Client acknowledges and agrees that, to the extent VP has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Agreement or in any other document, the Client has been provided with an opportunity to independently verify the accuracy of that representation.

9.3 The Client waives any right to rescind, terminate or cancel the Agreement with VP or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by VP and the Client acknowledges that it is relying on its own skills and judgement when acquiring the Goods.

10. SELLER'S OBLIGATIONS

10.1 Any condition or warranty which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.

10.2 Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty will be deemed to be included in the Agreement. However, the liability of VP for any breach of such condition or warranty will be limited, at the option of VP, to one or more of the following:

(a) if the breach relates to Goods:
(iv) the replacement of the Goods or the supply of equivalent Goods;

(vii) the payment of the cost of having the Goods repaired;
and

(b) if the breach relates to Services:

(viii) the supplying of the Services again; or

(ix) the payment of the cost of having the Services supplied again.

10.3 If the Home Building Contract Act 1991 (WA) applies to this Agreement, VP will provide a Defect Liability Period of four (4) months commencing on the day of the practical completion of the Services or the date of delivery of the Goods, whichever is earlier.

10.4 The warranty in clause 10.3 is subject to the conditions in clauses 10.5, 10.6 and 10.7.

10.5 The Client must give VP written notice with sufficient particulars of the Defect within the Defect Liability Period.

10.6 The Client must inform VP of its intended purpose before VP commences the Services. Otherwise, the Client agrees that it will not be able to claim that the Services (or Goods supplied) were not reasonably fit for its purpose.

10.7 VP is not liable to rectify any Defect in any of the following circumstances:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Client to properly maintain the Goods or the property to which the Goods are installed to/on; or

(ii) failure on the part of the Client to follow any instructions or guidelines provided by VP; or

(iii) any use of the Goods not contemplated by this Agreement; or

- (iv) the continued use of the Goods after any Defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) if the Goods are repaired, modified, altered or overhauled without VP's consent.
 - (c) in respect of all claims VP shall not be liable to compensate the Client for any delay in either properly assessing the Client's claim or rectifying the Defect.
- 10.8 VP may repair or replace any Goods or part of any Goods with second-hand replacement parts of the same or similar age, use and quality as those Goods or part of any Goods subject to such second-hand parts being suitable for such purpose.

11. THE COMPETITION AND CONSUMER ACT 2010 (CTH) ("CCA") AND THE FAIR TRADING ACT ("FTA")

- 11.1 Nothing in the Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

12. INTELLECTUAL PROPERTY

- 12.1 The Client expressly agrees and acknowledges that:
- (a) any Intellectual Property in VP's Goods and/or Services (whether unregistered, registered or registrable) is the property of VP; and
 - (b) nothing in the Agreement is intended to provide the Client with any interest in the Intellectual Property in VP's Goods and Services.

13. EXCLUSION OF LIABILITY

- 13.1 The Client agrees that VP or its affiliates, agents and sub-contractors and each of their partners, principals, members, employees and other personnel will not be liable to the Client for any actions,

claims, or Loss in any way arising out of or relating to the Services or VP's breach of this Agreement for an amount greater than the Price paid by the Client to VP under this Agreement.

- 13.2 In no event will VP or its affiliates, agents or sub-contractors or any of their partners, principals, members, employees or other personnel be liable for special, incidental, indirect, consequential or punitive damages, costs expenses or losses of any kind, lost profits, lost revenue, loss of management time, opportunity costs, failure to realise anticipated savings, or lost data.

- 13.3 This clause 13 will apply regardless of the form of action, damage, claim, liability, cost, expense or loss whether in contract, statute or tort (including without limitation to negligence) or otherwise. To the extent that this clause 13 refers to persons other than VP, VP holds the benefit of this clause 13 on trust for them.

14. INDEMNITY

- 14.1 The Client continually indemnifies VP, VP's affiliates, agents or subcontractors, against any claim or proceeding that is made, threatened or commenced, and against any liability, Loss, damage or expense (including legal costs on a full indemnity basis) any of them incurs or suffers, as a direct or indirect result of any of the following:

- (a) A breach of this agreement including any warranty;
- (b) A wilful, unlawful or negligent act or omission by the Client or an officer, employee, agent or subcontractor of the Client;
- (c) Damage to or loss of any of VP's property or Goods.

- 14.2 The Client agrees to release VP from all claims and demands whatsoever arising from any damage to the Site or the property where the Services are carried out, or any other property including but not limited to pipes, cables caused by or contributed by VP (whether during this Agreement or after the Services have been completed).

- 14.3 The Client is required to provide VP (at least 2 business days before the commencement of the Services) with clear and accurate information and Site plans of any underground cables and pipes (including sewer pipes, water or gas lines) before VP carries out any excavation works (if applicable). If the Client fails to do so or provides inaccurate information or Site plans, the Client indemnifies VP from any claims for costs, expenses or losses from any third party.
- 14.4 Should the works at the Site be held up for reasons beyond VP's control, the Client shall indemnify VP from any increased costs, losses (including but not limited to indirect losses such as loss of or delays to VP's other contracts) or expenses due to such delay.
- 14.5 The Client shall indemnify VP from any costs incurred and any claims that VP suffers if VP is unable to gain access to the Site.

15. DEFAULT AND TERMINATION

- 15.1 Neither Party shall take any action (including legal action) against the other Party for a default of the Agreement without first giving the defaulting Party written notice specifying the default and providing the defaulting Party with seven (7) days to rectify such.
- 15.2 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% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 15.3 If the Client defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Client will indemnify VP from and against all costs and disbursements incurred by VP in pursuing the debt including legal costs (on a solicitor and own client basis) and VP's debt recovery costs.
- 15.4 Without prejudice to any other remedies VP may have, if at any time the Client is in breach of any obligation (including those relating to payment), VP may suspend or terminate the Services to the Client and any of its other obligations under these Terms and Conditions. VP will not be liable to the Client for any loss or damage the Client suffers because VP has exercised its rights under this clause.

- 15.5 Without prejudice to VP's other remedies at law VP is entitled to terminate this Agreement and all amounts owing to VP shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to VP becomes overdue, or in VP's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent or bankrupt, 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 trustee in bankruptcy, receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

- 15.6 In the event that the Client cancels delivery of the Goods, the Client will be liable for any loss incurred by VP (including but not limited to any loss of profits, manufacturing costs) up to the time of cancellation.

16. RIGHTS TO DISPOSE THE GOODS

- 16.1 In the event that:
- (a) the VP retains possession or control of the Goods; and
 - (b) payment of the Price is due to VP; and
 - (c) VP has made demand in writing to the Client for payment of the Price under this Agreement; and
 - (d) VP has not received the Price of the Goods, then VP may dispose of the Goods and may claim from the Client the loss to VP on such disposals.

17. LIEN & STOPPAGE IN TRANSIT

- 17.1 Where VP has not received or been tendered the whole of the Price, or the payment has been dishonored, VP shall have:
- (a) a lien over the Goods;
 - (b) the right to retain the Goods while VP is in possession of them;
 - (c) a right of stopping the Goods in transit before delivery; and

(d) a right of resale.

17.2 The foregoing right of disposal, provided that the lien of VP shall continue despite the commencement of proceedings or judgment for the Price having been obtained.

18. SECURITY AND CHARGE

18.1 Subject to clause 8 and the PPSA:

(a) where the Client and/or the Guarantor (if any) is the owner of any real property, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said real property to VP or VP's nominee to secure all amounts and other monetary obligations payable under the Agreement. The Client and/or the Guarantor acknowledge and agree that VP (or VP's nominee) is entitled to lodge an absolute caveat, where appropriate and the caveat will be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should VP elect to proceed in any manner in accordance with this clause 18 and/or its sub-clauses, the Client and/or the Guarantor will indemnify VP from and against all VP's incurred costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint VP or VP's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 18.

19. FORCE MAJEURE

19.1 If VP is delayed, hindered, or otherwise prevented from complying with its obligations under these Terms and Conditions by reason of events or circumstances beyond the reasonable control of VP including but not limited to acts of God, wars, riots, strikes, lock-outs, trade disputes or labour disturbances, breakdown of plant or machinery, accidents, storm, fire, floods, difficulties in obtaining materials, goods,

transport or labour or any other circumstances affecting the supply of goods and services, VP is not liable to the Client for any loss or damage which is or may be suffered by the Client whether as a direct or indirect result of any such events or circumstances.

20. PRIVACY ACT 1988 (CTH)

20.1 The Client and/or its Guarantor/s agrees for VP to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by VP.

20.2 The Client and/or its Guarantor/s agrees that VP may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the credit worthiness of Client and/or Guarantor/s.

20.3 The Client consents to VP being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

20.4 The Client agrees that personal credit information provided may be used and retained by VP for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:

(a) provision of Services; and/or

(b) marketing by VP or its agents in relation to the Services; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the payment for the Services; and/or

- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 20.5 VP may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

21. DISPUTE RESOLUTION

- 21.1 If any dispute arises out of or in connection with this Agreement (whether on the interpretation of its terms or whether there is a breach of this Agreement) ("Dispute"), a Party may not commence any court proceedings or application to the relating to the Dispute unless this clause 21 has first been complied with, except where that Party seeks urgent interlocutory relief.
- 21.2 The Party claiming that a Dispute has arisen under or in relation to this Agreement must give notice in writing to the other Party specifying the nature of the Dispute.
- 21.3 On receipt of that notice by the other Party, all of the Parties must use all reasonable efforts to expeditiously resolve the Dispute.
- 21.4 If the Parties have not resolved the Dispute within fourteen (14) days of receipt of the notice referred to in clause 21.2, or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to the Western Australian Building Commission for dispute resolution
- 21.5 If the Building Commissioner finds in VP's favour, the Client agrees to pay all VP's costs associated with the Dispute (including but not limited to fees to the Building Commissioner, VP's administrative and legal costs).
- 21.6 The Client will not withhold payments due and payable to VP under this

Agreement (set-off) as a consequence of a Dispute.

- 21.7 Nothing in clause 21 or these Terms and Conditions is intended to exclude, modify or restrict the operation of the Construction Contract Act 2004 (WA).

22. GENERAL

- 22.1 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 Western Australia and the Parties unconditionally submit to the jurisdiction of the courts of Western Australia.
- 22.3 The documents comprising the Agreement will be read in the following order of precedence:
- (b) the Agreement;
 - (c) the Terms and Conditions;
- Where any conflict occurs between the provisions contained in the Terms and Conditions, the Terms and Conditions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of the Terms and Conditions.
- 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 VP.
- 22.5 VP may license or sub-contract all or any part of its rights and obligations (including supplying of the Services) without the Client's consent.
- 22.6 VP reserves the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which VP notifies the Client of such change.

22.7 The failure by VP to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect VP's right to subsequently enforce that provision.

22.8 Upon acceptance of these Terms and Conditions by the Client, the Terms and Conditions are binding and can only be amended with the written consent both the Parties.

SIGNED by the Parties' representatives as acknowledgement of receipt of these Terms and Conditions

**AUTHORISED CLIENT
REPRESENTATIVE**

CLIENT'S GUARANTOR 1

CLIENT'S GUARANTOR 2

NAME

NAME

NAME

**AUTHORISED REPRESENTATIVE FOR VIVIAN
PLUMBING**

NAME

DATE: