

Bell Plumbing Limited – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Bell Plumbing" means Bell Plumbing Limited, its successors and assigns or any person acting on behalf of and with the authority of Bell Plumbing Limited.</p> <p>1.2 "Customer" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by Bell Plumbing to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interpreted accordingly).</p> <p>1.4 "Equipment" means all Equipment including any accessories supplied on hire by Bell Plumbing to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Bell Plumbing to the Customer.</p> <p>1.5 "Price" means the Price payable for the Goods/Equipment hire as agreed between Bell Plumbing and the Customer in accordance with clause 5 below.</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.</p> <p>2.2 These terms and conditions may only be amended with Bell Plumbing's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Bell Plumbing.</p> <p>2.3 The Customer shall notify Bell Plumbing of any request to change the time or date of the installation on the day before the installation is to take place. Bell Plumbing reserves the right to charge a Call-Out Fee of one (1) hour plus labour if the Customer fails to notify Bell Plumbing by the prescribed time.</p> <p>2.4 Where Bell Plumbing gives advice, recommendations, information, assistance or service to the Customer or the Customer's agent, regarding the Goods or Services then it is given in good faith and Bell Plumbing shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.</p> <p>3. Authorised Representatives</p> <p>3.1 Unless otherwise limited under clause 3.2 the Customer agrees that should the Customer introduce any third party to Bell Plumbing as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies Bell Plumbing in writing that said person is no longer the Customer's duly authorised representative).</p> <p>3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Bell Plumbing in writing of the parameters of the limited authority granted to their representative.</p> <p>3.3 The Customer specifically acknowledges and accepts that they will be solely liable to Bell Plumbing for all additional costs incurred by Bell Plumbing (including Bell Plumbing's profit margin) in providing any Services, Goods, Services or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).</p> <p>4. Change in Control</p> <p>4.1 The Customer shall give Bell Plumbing not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, or business practice). The Customer shall be liable for any loss incurred by Bell Plumbing as a result of the Customer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At Bell Plumbing's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by Bell Plumbing to the Customer; or</p> <p>(b) Bell Plumbing's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 Bell Plumbing reserves the right to change the Price if a variation to Bell Plumbing's quotation is required. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to Bell Plumbing in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, safety considerations, extra parts required, prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc which are only discovered on commencement of the Services) will be charged for on the basis of Bell Plumbing's quotation and will be shown as variations on the invoice.</p> <p>5.3 At Bell Plumbing's sole discretion a deposit may be required.</p> <p>5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Bell Plumbing, which may be:</p> <p>(a) on delivery of the Goods/Equipment;</p> <p>(b) by way of instalments/progress payments in accordance with Bell Plumbing's payment schedule;</p> <p>(c) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(d) the date specified on any invoice or other document as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Bell Plumbing.</p> <p>5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Customer and Bell Plumbing.</p> <p>5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Bell Plumbing an amount equal to any GST Bell Plumbing must pay for any supply by Bell Plumbing under this or any other agreement for the sale of the Goods or the Customer must pay GST, without deduction or set-off, on any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6. Delivery of Goods/Equipment</p> <p>6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that Bell Plumbing (or Bell Plumbing's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 At Bell Plumbing's sole discretion the cost of delivery is included in the Price.</p> <p>6.3 Bell Plumbing may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.4 Any time or date given by Bell Plumbing to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and Bell Plumbing will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p> <p>7. Risk</p> <p>7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Bell Plumbing is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Bell Plumbing is sufficient evidence of Bell Plumbing's rights to receive the insurance proceeds without the need for any person dealing with the insurance company to sign any documents.</p> <p>7.3 If the Customer requests Bell Plumbing to leave the Goods outside Bell Plumbing's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p> <p>7.4 Where Bell Plumbing is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Bell Plumbing shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.</p> <p>7.5 Where the Customer has supplied Goods for Bell Plumbing to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Goods. Bell Plumbing shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of Goods supplied by the Customer.</p> <p>7.6 The Customer acknowledges that Bell Plumbing is only responsible for parts that are replaced by Bell Plumbing and that in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify Bell Plumbing against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising (including, but not limited to, loss of perishables, flooding and/or damage to clothing).</p> <p>7.7 The Customer acknowledges that the presence of dirt or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Bell Plumbing is requested to merely clear such blockages, Bell Plumbing can offer no guarantee against recurrence or further damage. In the event of collapse during the pipe clearing process, Bell Plumbing will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.</p> <p>8. Customer's Responsibilities</p> <p>8.1 The Customer acknowledges that in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify Bell Plumbing against any costs incurred by Bell Plumbing as a consequence of such discovery. Under no circumstances will Bell Plumbing handle removal of asbestos products.</p> <p>8.2 The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which Bell Plumbing is required to install (or to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which Bell Plumbing based the quotation on and therefore, the Customer agrees to indemnify Bell Plumbing against any costs incurred by Bell Plumbing in rectifying such errors if required.</p>	<p>8.3 Bell Plumbing is not responsible for the removal of rubbish from or clean-up of the building/construction sites. This is the responsibility of the Customer or the Customer's agent.</p> <p>9. Dimensions, Plans and Specifications</p> <p>9.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless Bell Plumbing and the Customer agree otherwise in writing.</p> <p>9.2 Bell Plumbing shall be entitled to rely on the accuracy of any plans, specifications and other documents provided by the Customer.</p> <p>9.3 If the giving of an estimate or quotation for the supply of Goods involves Bell Plumbing estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of Bell Plumbing's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.</p> <p>9.4 Should the Customer require any changes to Bell Plumbing's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.</p> <p>Access</p> <p>10.1 The Customer shall ensure that Bell Plumbing has clear and free access to the work site at all times to enable them to undertake the Services. Bell Plumbing shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Bell Plumbing.</p> <p>Underground Locations</p> <p>11.1 Prior to Bell Plumbing commencing any work the Customer must advise Bell Plumbing of the precise location of all underground services on the site and clearly mark the same. The underground mains services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>11.2 Whilst Bell Plumbing will take all care to avoid damage to any underground services the Customer agrees to indemnify Bell Plumbing in respect of all and any liability claims, loss, damage and fines as a result of damage to services not precisely located and notified as per clause 11.1.</p> <p>Title To Goods</p> <p>12.1 Bell Plumbing and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid Bell Plumbing all amounts owing to Bell Plumbing; and</p> <p>(b) the Customer has met all of its other obligations to Bell Plumbing.</p> <p>12.2 Receipt by Bell Plumbing of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>12.3 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and must return the Goods to Bell Plumbing on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Bell Plumbing and must pay to Bell Plumbing the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Bell Plumbing and must pay or deliver the proceeds to Bell Plumbing on demand;</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Bell Plumbing and must sell, dispose of or return the resulting product to Bell Plumbing as its direct agent;</p> <p>(e) the Customer irrevocably authorises Bell Plumbing to enter any premises where Bell Plumbing believes the Goods are kept and recover possession of the Goods;</p> <p>(f) Bell Plumbing may recover possession of any Goods in transit whether or not delivery has occurred;</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods while they remain the property of Bell Plumbing;</p> <p>(h) Bell Plumbing may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>13. Personal Property Securities Act 1999 ("PPSA")</p> <p>13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods/Equipment previously supplied by Bell Plumbing to the Customer (if any) and all Goods/Equipment that will be supplied in the future by Bell Plumbing to the Customer.</p> <p>13.2 The Customer undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bell Plumbing may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, Bell Plumbing for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;</p> <p>(c) not register a financing change statement or a change demand without the prior written consent of Bell Plumbing; and</p> <p>(d) immediately advise Bell Plumbing of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>13.3 Bell Plumbing and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>13.5 Unless otherwise agreed to in writing by Bell Plumbing, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>13.6 The Customer shall unconditionally ratify any actions taken by Bell Plumbing under clauses 13.1 to 13.5.</p> <p>14. Security and Charge</p> <p>14.1 In consideration of Bell Plumbing agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other asset capable of being mortgaged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>14.2 The Customer indemnifies Bell Plumbing from and against all Bell Plumbing's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Bell Plumbing's rights under this clause.</p> <p>14.3 The Customer irrevocably appoints Bell Plumbing and each director of Bell Plumbing as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.</p> <p>15. Customer's Disclaimer</p> <p>15.1 The Customer disclaims any right to rescind, or cancel any contract with Bell Plumbing or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Bell Plumbing and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.</p> <p>16. Defects</p> <p>16.1 The Customer shall inspect the Goods/Equipment on delivery and shall within three (3) days of delivery (time being of the essence) notify Bell Plumbing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Bell Plumbing an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which Bell Plumbing has agreed to return to the Customer is entitled to repair, Bell Plumbing's liability is limited to either (at Bell Plumbing's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.</p> <p>16.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 16.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).</p> <p>17. Warranty</p> <p>17.1 For Goods not manufactured by Bell Plumbing, the warranty shall be the current warranty provided by the manufacturer of the Goods. Bell Plumbing shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.</p> <p>18. Consumer Guarantees Act 1993</p> <p>18.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Bell Plumbing to the Customer.</p> <p>19. Default and Consequences of Default</p> <p>19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Bell Plumbing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>19.2 If the Customer owes Bell Plumbing any money the Customer shall indemnify Bell Plumbing from and against all costs and disbursements incurred by Bell Plumbing in recovering the debt including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, Bell Plumbing's collection agency costs, and bank disbursement fees.</p>	<p>19.3 Without prejudice to any other remedies Bell Plumbing may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Bell Plumbing may suspend or terminate the supply of Goods/Equipment to the Customer. Bell Plumbing will not be liable to the Customer for any loss or damage the Customer suffers because Bell Plumbing has exercised its rights under this clause.</p> <p>19.4 Without prejudice to Bell Plumbing's other remedies at law Bell Plumbing shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Bell Plumbing shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Bell Plumbing becomes overdue, or in Bell Plumbing's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>20. Compliance with Laws</p> <p>20.1 The Customer and Bell Plumbing shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.</p> <p>20.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.</p> <p>20.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>21. Dispute Resolution</p> <p>21.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.</p> <p>22. Cancellation</p> <p>22.1 Bell Plumbing may obligate any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice Bell Plumbing shall repay to the Customer any money paid by the Customer for the Goods/Equipment. Bell Plumbing shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>22.2 In the event that the Customer cancels delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Bell Plumbing as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>22.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>23. Privacy Act 1993</p> <p>23.1 The Customer authorises Bell Plumbing or Bell Plumbing's agent to:</p> <p>(a) access, collect, retain and use any information about the Customer;</p> <p>(i) including an overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Customer;</p> <p>(b) disclose information about the Customer, whether collected by Bell Plumbing from the Customer directly or obtained by Bell Plumbing from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.</p> <p>23.2 Where the Customer is an individual the authorities under clause 23.1 are authorities or consent for the purposes of the Privacy Act 1993.</p> <p>23.3 The Customer shall have the right to request Bell Plumbing for a copy of the information about the Customer retained by Bell Plumbing and the right to request Bell Plumbing to correct any incorrect information about the Customer held by Bell Plumbing.</p> <p>24. Equipment Hire</p> <p>24.1 Equipment shall at all times remain the property of Bell Plumbing and is returnable on demand by Bell Plumbing. In the event that Equipment is not returned to Bell Plumbing in the condition in which it was delivered Bell Plumbing retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all Bell Plumbing shall have right to charge the Customer the full cost of replacing the Equipment. The Customer shall:</p> <p>(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;</p> <p>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Bell Plumbing to the Customer;</p> <p>24.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Bell Plumbing's interest in the Equipment and agrees to indemnify Bell Plumbing against physical loss or other including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or cancellation arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>25. Construction Contract Act 2002</p> <p>25.1 The Customer hereby expressly acknowledges that:</p> <p>(a) Bell Plumbing has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:</p> <p>(i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or</p> <p>(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or</p> <p>(iii) the Customer has not complied with a contractor's notice that the Customer must pay an amount to Bell Plumbing by a particular date; and</p> <p>(iv) Bell Plumbing has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.</p> <p>(b) If Bell Plumbing suspends work, it:</p> <p>(i) is not in breach of contract; and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and</p> <p>(iii) is entitled to an extension of time to complete the contract; and</p> <p>(iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or by an adjudicator's determination has not been completed with.</p> <p>(c) If Bell Plumbing exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to Bell Plumbing under the Contractual Remedies Act 1979; or</p> <p>(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Bell Plumbing suspending work under this provision.</p> <p>26. General</p> <p>26.1 The failure by Bell Plumbing to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bell Plumbing's right to subsequently enforce that provision. 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.</p> <p>26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Tauranga.</p> <p>26.3 Bell Plumbing shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Bell Plumbing of these terms and conditions (alternatively Bell Plumbing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment).</p> <p>26.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Bell Plumbing nor to withhold payment of any invoice because of part of that invoice is in dispute.</p> <p>26.5 Bell Plumbing may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>26.6 The Customer agrees that Bell Plumbing may amend these terms and conditions at any time. If Bell Plumbing makes a change to these terms and conditions, then that change will take effect from the date on which Bell Plumbing notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Bell Plumbing to provide Goods/Equipment to the Customer.</p> <p>26.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>26.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
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