



PLUMBING & BACKFLOW SOUTH EAST QLD ABN 16 131 263 291

PLUMBERS NEW SOUTH WALES ABN 16 131 263 291

## TERMS AND CONDITIONS

### Interpretation

1. In these Terms and Conditions:
  - (a) **ACL** means the Australian Consumer Law under the *Competition and Consumer Act 2010 (C'th)*.
  - (b) **Agreement** means an agreement entered into between Plumbing & Backflow SEQ and the Client to which these Terms and Conditions apply. For the avoidance of doubt, each time Plumbing & Backflow SEQ accepts an Order, a separate Agreement is formed incorporating the Order and these Terms and Conditions. Any other terms or conditions (e.g. appearing on the Client's Orders, website or stationery) do not form part of an Agreement unless expressly agreed in writing to the contrary.
  - (c) **Collateral, Financing Statement, Financing Change Statement, Security Agreement and Security Interest** have the same meanings as in the PPSA.
  - (d) **Construction Work** has the same meaning as in the *Building and Construction Industry Payments Act 2004 (Qld)*.
  - (e) **Client** means the acquirer of Services from Plumbing & Backflow SEQ as specified in any invoice, Application for Credit, Order or other document and if there is more than one person or entity, is a reference to each acquirer jointly and severally.
  - (f) **Descriptive Matter** means and includes without limitation, Specifications, descriptions, pictures, drawings, diagrams, particulars of varieties/weights/dimensions or any other form of description or measurement submitted with or prior to any offer or invitation by Plumbing & Backflow SEQ or contained in its website, catalogues, price lists or advertising matter.
  - (g) **Due Date** means the date 14 days after the date of the invoice issued by Plumbing & Backflow SEQ for the Services.
  - (h) **Goods** means all parts, components, equipment or products sold or supplied (whether gratuitously or not) by Plumbing & Backflow SEQ to the Client forming part of the Services, or as specified in the Quote or Order, or as otherwise agreed between Plumbing & Backflow SEQ and the Client.
  - (i) **Grantor** refers to the Client and has the same meaning as in the PPSA.
  - (j) **GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (C'th)*.
  - (k) **Intellectual Property** means any intellectual or industrial property, including (without limitation):
    - (i) any patent, trademark or service mark, copyright, registered design, trade secret or confidential information; or
    - (ii) any licence or other Right to use or to grant the use of any of the above or to be the registered proprietor or user of any of them;
  - (l) **Interest Rate** means the rate which is 3% per annum above the rate charged by Plumbing & Backflow SEQ's bank from time to time on unsecured overdrafts of \$100,000 or more, conclusive evidence of which will be confirmation in writing by a manager of Plumbing & Backflow SEQ's bank.
  - (m) **Non-Excludable Condition** means any condition, warranty or guarantee provided or implied by any state, territory or commonwealth law, including but not limited to the statutory consumer guarantees described in the ACL, and the provisions of any state or territory legislation which cannot be lawfully excluded.
  - (n) **Obligation** means any express or implied legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.
  - (o) **Order** means any purchase order or other request by the Client for the supply of Services by Plumbing & Backflow SEQ, whether that supply is to the Client or to any third party and whether the request amounts to an offer or an invitation to treat from the Client, or is constituted by the acceptance by the Client of a Quote provided by Plumbing & Backflow SEQ.
  - (p) **Performance** means:

- (i) in the case of Services, completion of those Services; and
  - (ii) in the case of Goods, delivery by Plumbing & Backflow SEQ to the Client at the location or place specified by the Client in an Order; and
- includes such other place or date (as the case may be) as the parties may agree or as Plumbing & Backflow SEQ may, without Obligation and at its sole discretion, consider reasonable in the circumstances.
- (q) **Plumbing & Backflow SEQ** means Darren Leslie Evans ABN 16 131 263 291, trading in Queensland as *Plumbing & Backflow South East Qld* and in New South Wales as *Plumbers New South Wales*.
  - (r) **PMSI** means a Purchase Money Security Interest within the meaning of section 14 of the PPSA.
  - (s) **PPSA** means the *Personal Property Securities Act 2009 (C'th)*.
  - (t) **PPSR** means the Personal Property Securities Register established pursuant to the PPSA.
  - (u) **Service Charges** means the price payable for Services as agreed between Plumbing & Backflow SEQ and the Client in accordance with clause 6 of these Terms and Conditions.
  - (v) **Quote** means any quotation form or other document provided by Plumbing & Backflow SEQ to the Client detailing the Services to be provided.
  - (w) **Rates** means the rates set out in the Schedule of Rates for Plumbing & Backflow SEQ which can be found on Plumbing & Backflow SEQ's website, currently located at [www.plumbingseq.com.au/rates](http://www.plumbingseq.com.au/rates) or the hourly rates stated in the relevant Quote if they are different from those stated in the Schedule of Rates.
  - (x) **Right** includes any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.
  - (y) **Schedule** means a Schedule setting details of an Agreement including, without limitation, particulars of the Client, the Services and the Service Charges;
  - (z) **Services** means the services to be performed (whether gratuitously or not) by Plumbing & Backflow SEQ as specified in the Schedule, Quote or Order or as otherwise agreed between Plumbing & Backflow SEQ and the Client.
  - (aa) **Service Charges** means the charges payable for the relevant Services calculated in accordance with:
    - (i) where the parties have signed a Schedule, the rates or items specified in the Schedule;
    - (ii) where there is no Schedule applicable to an Agreement, the Rates; plus any applicable GST, tolls, levies, freight and other charges relevant to this Agreement and the Services, including other amounts payable pursuant to these Terms and Conditions.
  - (bb) **Specifications** means any written specification that details the quantities, processes and/or conditions required for the correct use of the Services.
  - (cc) **Terms and Conditions** means these Terms and Conditions and includes, where the context requires, any additional Terms and Conditions agreed to by Plumbing & Backflow SEQ in writing from time to time.
  - (dd) where the context requires, a reference to "Services" will mean and include a reference to "Goods" sold or "Services" supplied or "Goods and/or Services" sold and supplied.
  - (ee) singular includes plural and vice versa and any gender includes every gender.
  - (ff) a reference to a person includes corporations, trusts, associations, partnerships, a government authority and other legal entities, and where necessary, include successor bodies.
  - (gg) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes.
  - (hh) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of these Terms and Conditions.
  - (ii) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.
  - (jj) nothing in these Terms and Conditions may be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, Right or remedy implied by law (including the ACL and the PPSA) and which by law cannot be excluded, restricted or modified.

### **Terms of Sale**

2. Services supplied by Plumbing & Backflow SEQ are supplied strictly on these Terms and Conditions, which can only be waived or varied in writing by Plumbing & Backflow SEQ. Unless an Order expressly provides otherwise, these Terms and Conditions will prevail over all conditions expressed or implied in any Order placed by the Client (or in any standard terms and conditions of the Client) to the extent of any inconsistency.

3. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions if the Client places an Order for or accepts Performance of Services.
4. Services to be supplied by Plumbing & Backflow SEQ to the Client are as described on the Order accepted by Plumbing & Backflow SEQ and the description of Services on the Order as accepted (modified only as may be agreed in writing) will prevail over all other descriptions including any prior enquiry by the Client.
5. Plumbing & Backflow SEQ reserves the right to update from time to time the Terms and Conditions which will apply to an Agreement. If Plumbing & Backflow SEQ makes a change to these Terms and Conditions, that change will take effect from the date on which Plumbing & Backflow SEQ provides reasonable notification to the Client of such change. The Client confirms that notification on Plumbing & Backflow SEQ's website of the updated Terms and Conditions or reference to the updated Terms and Conditions in any material provided to the Client will be reasonable steps taken by Plumbing & Backflow SEQ to inform the Client. The Client will be taken to have acknowledged and accepted such change if the Client makes a subsequent request for Plumbing & Backflow SEQ to provide Services to the Client. Plumbing & Backflow SEQ declares and the Client acknowledges that the most up-to-date version of the Terms and Conditions which form part of the Agreement can be found on Plumbing & Backflow SEQ's website, currently located at [www.plumbingseq.com.au/termsoftrade](http://www.plumbingseq.com.au/termsoftrade).

### **Service Charges and Payment**

6. At Plumbing & Backflow SEQ's sole discretion the Service Charges shall be:
  - (a) as indicated on any invoice provided by Plumbing & Backflow SEQ to the Client; or
  - (b) Plumbing & Backflow SEQ's quoted Service Charges (subject to clause 7) which will be valid for the period stated in the Quote or otherwise for a period of fourteen (14) days, unless earlier withdrawn. Plumbing & Backflow SEQ reserves the Right to refuse any Order based on any Quote within 14 days after the date of receipt of the Order.
7. Plumbing & Backflow SEQ reserves the Right to change the Service Charges if a variation to Plumbing & Backflow SEQ's Quote is requested or if there is a change in the scope, timing or order of the Services. Plumbing & Backflow SEQ will be entitled to payment of an additional amount which is reasonable in the circumstances. In particular, but without limitation, if Services are claimed to be defective but are not in fact defective after testing, then Plumbing & Backflow SEQ is entitled to charge the Client for all labour and other costs incurred in investigating the alleged defects. Any additional Services required by the Client may be charged to the Client calculated on the basis of the Rates.
8. At Plumbing & Backflow SEQ's sole discretion, a non-refundable deposit may be required prior to acceptance of an Order.
9. Time for payment for Services will be of the essence and unless otherwise agreed by Plumbing & Backflow SEQ, the Service Charges must be paid by the Client by cleared funds by the Due Date within 14 days after the date of Performance of the Services or by such other date determined by Plumbing & Backflow SEQ in its sole discretion.
10. Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus the maximum credit card bank fee, merchant fee and administration surcharge permitted by law), or by any other method as agreed in writing between the Client and Plumbing & Backflow SEQ.
11. Plumbing & Backflow SEQ may charge interest at the Interest Rate on all moneys due and owing by the Client to Plumbing & Backflow SEQ from time to time for the period from the due date for payment of such moneys until the date upon which payment is ultimately received by Plumbing & Backflow SEQ.
12. Should Plumbing & Backflow SEQ become a creditor of the Client, the Client authorises Plumbing & Backflow SEQ to collect, retain, use, record, and disclose credit information about the Client for the purpose of assessing and reporting matters related to the Client's credit-worthiness.
13. If the Client breaches the payments terms, Plumbing & Backflow SEQ may, as its discretion, terminate the Agreement and report the breach to any credit provider or credit reference organisation. The Client understands that this may affect its credit rating.
14. Unless otherwise stated the Service Charges as charged includes GST. The Client must pay any other taxes and duties that may be applicable in addition to the Service Charges except where they are expressly included in the Service Charges.
15. The cost of any permits, licence fees and/or toll charges incurred by Plumbing & Backflow SEQ, and any special packing and packing materials used in relation to Services, will be charged to the Client despite that such cost may have been omitted from any Quote.

### **Descriptive Matter, etc**

16. The descriptions, illustrations and performances contained in any Descriptive Matter do not form part of the Agreement for supply of Services or of the description applied to any Services. The Client acknowledges that it has not relied upon any descriptions, illustrations and performances contained in any Descriptive Matter as an inducement into entering into any Agreement or other contract for sale or

supply with Plumbing & Backflow SEQ. The Client must determine whether the Services requested by the Client and supplied by Plumbing & Backflow SEQ are adequate for the purpose intended by the Client. Plumbing & Backflow SEQ is not capable of determining all of the Client's objectives in relation to the Services and relies on the Client as to whether the Services are adequate to achieve the Client's purpose and objectives.

**Performance**

17. Any performance standards, figures or representations as to quality given by Plumbing & Backflow SEQ are estimates only. Plumbing & Backflow SEQ is under no liability for damages for failure of any Services to attain such quality standards, figures or quality unless specifically warranted in writing. Any such warranties are subject to recognised tolerances applicable to such standards, figures or quality.

**Performance**

18. Plumbing & Backflow SEQ will not be liable for any loss, damage or delay occasioned to the Client, its customers or any other person, arising from:
- (c) late Performance or non-Performance, or late utilisation of any Services; or
  - (d) any actions or Obligations conducted or incurred by the Client in reliance on any expected Performance date.
19. The Client is responsible for making arrangements to receive Services Delivered in accordance with any Order failing which Plumbing & Backflow SEQ may, without Obligation, Deliver in any other manner it considers reasonable in the circumstances.
20. If the Client fails to accept Performance of Services, the Client will be liable for loss of or damage to the Services and for any costs or damages incurred by Plumbing & Backflow SEQ on account of such failure to accept Performance.
21. The Client waives any claim for shortage of any Goods Delivered if a claim in respect of short delivery has not been lodged with Plumbing & Backflow SEQ within 48 hours from the date and time of Performance.
22. Should the Client fail to provide sufficient instructions to enable delivery of Goods to the Client, Plumbing & Backflow SEQ may, without Obligation, arrange for suitable storage and insurance until such Goods are dispatched. Charges for storage, insurance, transport and other incidental costs may be charged by Plumbing & Backflow SEQ to the Client.
23. Delivery of Goods to a third party nominated by the Client is deemed to be delivery to the Client.
24. Plumbing & Backflow SEQ may Deliver Services in separate instalments. Each separate instalment may be invoiced and paid in accordance with these Terms and Conditions.

**Risk**

25. The risk in, and all attached liability for damage to, Goods passes to the Client at the point of dispatch of the Goods even if Plumbing & Backflow SEQ Delivers Goods itself or Plumbing & Backflow SEQ's premises are the intended delivery location. The Client must make its own arrangements for insurance of the Goods on or before dispatch.
26. If any Goods are damaged or destroyed following dispatch but prior to ownership passing to the Client, Plumbing & Backflow SEQ is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by Plumbing & Backflow SEQ will be sufficient evidence of Plumbing & Backflow SEQ's Right to receive the insurance proceeds without the need for any person dealing with Plumbing & Backflow SEQ to make further enquiries.

**Loss or damage in transit**

27. Plumbing & Backflow SEQ is not responsible to the Client or any person claiming through the Client for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not Plumbing & Backflow SEQ is legally responsible for the person who caused or contributed to that loss or damage).
28. Plumbing & Backflow SEQ will endeavour to provide the Client with such assistance as may be necessary to press claims on carriers as long as the Client:
- (e) has notified Plumbing & Backflow SEQ and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
  - (f) lodges a claim for compensation upon the carrier within three (3) days of the date of receipt of Goods.

**Defects, Warranties and Returns**

29. The Client must inspect Services on Performance and must immediately upon Performance notify Plumbing & Backflow SEQ in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description, Order or quote or other grounds for rejection of the Services. Upon such notification the Client must:

- (a) specify all grounds relied upon by it in its rejection of the Services;
  - (b) provide good quality evidence of the grounds for its rejection of the Services; and
  - (c) allow Plumbing & Backflow SEQ the opportunity to inspect the Services.
30. Under applicable State, Territory and Commonwealth law (including, without limitation, the ACL), certain Non-Excludable Conditions may be implied into these Terms and Conditions. Nothing in these Terms and Conditions purports to modify or exclude the Non-Excludable Conditions.
31. Except as expressly set out in these Terms and Conditions or in respect of the Non-Excluded Conditions, Plumbing & Backflow SEQ makes no warranties or other representations under these Terms and Conditions or the Agreement generally including, without limitation, as to the quality, merchantability or suitability of any Services. Plumbing & Backflow SEQ's liability in respect of any such warranties is limited to the fullest extent permitted by law.
32. If the Client is a consumer within the meaning of the ACL, Plumbing & Backflow SEQ's liability in relation to Services which are not used for personal, domestic or household purposes is limited to:
- (a) either replacing or repairing Goods or reimbursing the Client for the repair or replacement of the Goods (at the election of Plumbing & Backflow SEQ);
  - (b) either re-supplying Services or reimbursing the Client for paying someone else to supply the Services (at the election of Plumbing & Backflow SEQ);
- or is otherwise limited to the extent permitted by section 64A of Schedule 2 or to similar remedies under any applicable state or territory fair trading legislation.
33. If the Client is not a consumer within the meaning of the ACL, Plumbing & Backflow SEQ's liability for any defect or damage in any Services is:
- (g) limited to the value of any express warranty provided to the Client by Plumbing & Backflow SEQ, at Plumbing & Backflow SEQ's sole discretion;
  - (h) limited to the extent of the benefit of any warranty to which Plumbing & Backflow SEQ is entitled; or
  - (i) otherwise negated absolutely.
34. Subject to these Terms and Conditions, returns will only be accepted provided that:
- (j) the Client has complied with the provisions of clause 29;
  - (k) Plumbing & Backflow SEQ has agreed that the Services are defective;
  - (l) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (m) the Goods are returned in as close a condition to that in which they were Delivered as is possible.
35. Despite clauses 29 to 34 but subject to the ACL, Plumbing & Backflow SEQ will not be liable for any defect or damage which may be caused or partly caused by or may arise as a result of:
- (n) the Client failing to properly maintain or store any Goods;
  - (o) the Client using Goods for any purpose other than that for which they were obviously suited;
  - (p) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a prudent operator or user;
  - (q) any failure by the Client to follow any instructions or guidelines provided by Plumbing & Backflow SEQ; or
  - (r) fair wear and tear, any accident, or act of God.
36. In the case of second hand Goods, unless the Client is a consumer under the ACL the Client acknowledges that:
- (s) it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults;
  - (t) to the extent permitted by law no warranty is given by Plumbing & Backflow SEQ as to the quality or suitability of the Goods for any purpose and any implied warranty, statutory or otherwise, is expressly excluded;
  - (u) Plumbing & Backflow SEQ has agreed to provide the Client with the second hand Goods, and has calculated the Service Charges of the second hand Goods, in reliance on this clause 36.
37. Plumbing & Backflow SEQ may in its absolute discretion accept non-defective Goods for return in which case Plumbing & Backflow SEQ may require the Client to pay handling fees not exceeding twenty-five percent (25%) of the invoiced value of the returned Goods, plus any freight costs.
38. Despite anything contained in these Terms and Conditions, if Plumbing & Backflow SEQ is required by a law to accept a return then Plumbing & Backflow SEQ will only accept a return on, and to the extent only, of the conditions imposed by that law.
39. Except as provided in these Terms and Conditions and to the maximum extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of Services for any purpose or as to design, application of Services, materials or workmanship or otherwise are expressly excluded.

40. Plumbing & Backflow SEQ is not liable for any loss or damage, loss of income, loss of profits, loss of markets, loss of reputation, loss of Clients, loss of use, loss of opportunity, loss of business, loss of reputation or goodwill, loss of value or use of intellectual property or other proprietary Rights even if Plumbing & Backflow SEQ had knowledge that such loss or damage might arise or for any other indirect, incidental, special or consequential loss or damage howsoever arising out of the performance of the Services or out of the Client's relationship with Plumbing & Backflow SEQ connected to the Agreement including, without limitation, Plumbing & Backflow SEQ's breach of contract, negligence, wilful act or omission or other default including to the extent that such conduct or default is outside the "four corners" of the Agreement, or deviates from it or defeats its main object.

#### **Rights in relation to Goods**

41. While Goods remain the property of Plumbing & Backflow SEQ (or of any other supplier on behalf of whom Plumbing & Backflow SEQ is selling the Goods):
- (v) the Client has no Right or claim to any interest in Goods to secure any liquidated or unliquidated debt or Obligation Plumbing & Backflow SEQ owes to the Client;
  - (w) the Client cannot claim any charge or lien over any Goods;
  - (x) the Client will not create any absolute or defeasible interest in Goods in relation to any third party except as may be authorised by Plumbing & Backflow SEQ.
42. Where the Client is in actual or constructive possession of Goods:
- (y) the Client will not deliver the Goods nor any document of title to the Goods to any person except as directed by Plumbing & Backflow SEQ; and
  - (z) it is in possession of the Goods as a bailee of those Goods and owes Plumbing & Backflow SEQ the duties and liabilities of a bailee.
43. Plumbing & Backflow SEQ and the Client agree that:
- (aa) the property in Goods does not pass to the Client until Plumbing & Backflow SEQ has been paid in full for Goods under all individual agreements for the sale or supply of Goods between Plumbing & Backflow SEQ and the Client;
  - (bb) the Client is a bailee of Goods until such time as property in the Goods passes to the Client and that this bailment continues in relation to all Goods until the price of those Goods has been paid in full;
  - (cc) pending payment in full for any Goods, the Client:
    - (i) must not supply any Goods to any person outside its ordinary or usual course of business;
    - (ii) must not allow any person to have or acquire any Security Interest in any Goods.
44. Despite clause 43(c), if the Client supplies any Goods to any person before all moneys payable by the Client have been paid to Plumbing & Backflow SEQ, the Client agrees that:
- (dd) it holds the proceeds of re-supply of those Goods on trust for and as agent for Plumbing & Backflow SEQ immediately when they are receivable or are received;
  - (ee) it must either pay the amount of the proceeds of re-supply to Plumbing & Backflow SEQ immediately when they are received or pay those proceeds into an account with a bank, financial institution or deposit-taking institution as trustee for Plumbing & Backflow SEQ;
  - (ff) if the Client fails to pay for any Services by the Due Date, Plumbing & Backflow SEQ may at any time and with reasonable force enter any site owned, possessed, occupied or controlled by the Client and recover possession of the Goods and the Client agrees that Plumbing & Backflow SEQ has an irrevocable licence to do so.
45. Plumbing & Backflow SEQ may recover possession of any Goods in transit whether or not delivery has occurred.
46. Plumbing & Backflow SEQ may commence proceedings to recover the Service Charges of Goods sold notwithstanding that property in those Goods has not passed to the Client.

#### **PPSA**

47. The Client acknowledges and agrees that:
- (gg) unless the Client provides express prior notification to Plumbing & Backflow SEQ to the contrary, all Goods supplied by Plumbing & Backflow SEQ to the Client are acquired in the course or furtherance of an enterprise by the Client, and are commercial property as defined in s.10 of the PPSA.
  - (hh) each Agreement with Plumbing & Backflow SEQ constitutes a Security Agreement in writing and a PMSI for the purposes of the PPSA which will subsist in all Goods that have been supplied, and that will be supplied, by Plumbing & Backflow SEQ to the Client until those Goods have been paid for in full.
48. The Client undertakes to:

- (ii) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Plumbing & Backflow SEQ may reasonably require to:
    - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement or document referred to in clause 48(a)(i) or 48(a)(ii);
  - (jj) indemnify, and upon demand reimburse, Plumbing & Backflow SEQ for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Goods charged thereby;
  - (kk) not register a Financing Change Statement in respect of a Security Interest without the prior written consent of Plumbing & Backflow SEQ;
  - (ll) not grant a Security Interest nor register, nor permit to be registered, a Financing Statement or a Financing Change Statement in relation to any Goods in favour of a third party without the prior written consent of Plumbing & Backflow SEQ;
  - (mm) immediately advise Plumbing & Backflow SEQ of any material change in its business practices of on-supply of Goods which would result in a change in the nature of proceeds derived from such supply.
49. Plumbing & Backflow SEQ and the Client agree that sections 96 and 125 of the PPSA do not apply to the Security Agreement created by an Agreement.
50. The Client waives its Rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
51. The Client waives its Rights as a Grantor and/or a debtor under sections 142 and 143 of the PPSA.
52. Unless otherwise agreed in writing by Plumbing & Backflow SEQ, the Client waives its Right to receive a verification statement or other notice in accordance with section 157 of the PPSA.
53. The Client must unconditionally ratify any actions taken by Plumbing & Backflow SEQ under clauses 48 to 52.
54. The Client acknowledges and agrees that if:
  - (nn) title to Collateral has not passed to the Client; and
  - (oo) where Plumbing & Backflow SEQ has seized such Collateral as contemplated by Division 2 of Part 4.3 of the PPSA (or has seized such Collateral in another manner);then:
  - (pp) to the extent permissible under the PPSA, nothing in s.125 or in s.134(1) or in other sections of the PPSA is to be taken to prevent Plumbing & Backflow SEQ from retaining such Collateral, without any obligation to take any further step in relation to disposal of the Collateral or any obligation to give notice to the Client in connection with such Collateral. It is intended that if this clause is deemed to be unenforceable or illegal, then it be severed from these Terms and Conditions without affecting the validity of other provisions of these Terms and Conditions.
55. Subject to any express and permitted provisions to the contrary, nothing in these Terms and Conditions is intended to have the effect of contracting out of any other provisions of the PPSA.

### **Security and Charge**

56. In consideration of Plumbing & Backflow SEQ agreeing to supply the Services, the Client charges (and grants a Security Interest over) all of its Rights, title and interest (whether joint or several) in any land, realty or other assets owned by the Client either now or in the future and capable of being charged, to secure the performance by the Client of its Obligations under an Agreement (including, without limitation, the payment of all moneys owed by the Client to Plumbing & Backflow SEQ from time to time).
57. The Client indemnifies Plumbing & Backflow SEQ from and against all Plumbing & Backflow SEQ's costs and disbursements, including legal costs on a full indemnity basis, incurred in exercising Plumbing & Backflow SEQ's Rights under clause 56.
58. The Client irrevocably appoints Plumbing & Backflow SEQ and each director of Plumbing & Backflow SEQ as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of clause 56 including, without limitation, signing any document on the Client's behalf.

### **Cancellation**

59. Plumbing & Backflow SEQ may cancel an Agreement or any Performance of Services at any time before the Services are Delivered by giving written notice to the Client. On giving such notice Plumbing & Backflow SEQ will repay to the Client any money paid by the Client for Services not yet Delivered. Plumbing & Backflow SEQ will not be liable for any loss or damage whatsoever arising from such cancellation.

60. Cancellation of Orders for Services made or provided to the Client's Specifications will not be accepted once production of those Services has commenced.
61. Cancellation of Orders by the Client will not be accepted once dispatch has commenced.
62. In the event that the Client cancels Performance of any Services the Client will be liable for any and all loss or damage incurred (whether direct or indirect) by Plumbing & Backflow SEQ as a direct result of the cancellation (including, without limitation, any loss of profits).

### **Confidentiality and Intellectual Property**

63. The Client must keep strictly confidential all financial, technological, strategic and other business information of Plumbing & Backflow SEQ which has been divulged to or become known by the Client in the course of its dealings with Plumbing & Backflow SEQ and which is not generally known outside Plumbing & Backflow SEQ's and the Client's respective organisations. The Client must only use such confidential information for the purpose for which it was disclosed, and only disclose the confidential information to those in its organisation who need to know in connection with the purpose for which it was disclosed. No disclosure may be made to anyone else without the written consent of Plumbing & Backflow SEQ (with the exception of disclosure required by law, in which case prior notice of the disclosure must be given to Plumbing & Backflow SEQ).
64. Plumbing & Backflow SEQ retains ownership in all Intellectual Property created by Plumbing & Backflow SEQ in providing the Services. Provided that the Client pays all amounts due to Plumbing & Backflow SEQ under the Agreement, Plumbing & Backflow SEQ grants the Client an irrevocable and royalty-free non-exclusive license to the extent only to use such relevant Intellectual Property for the purpose of obtaining the benefit of the Services only (but not to further exploit the Intellectual Property).

### **Construction Work**

65. The Client acknowledges and agrees that where any Services supplied by Plumbing & Backflow SEQ to the Client relate to Construction Work, each invoice or other payment claim rendered by Plumbing & Backflow SEQ to the Client will be a payment claim made under the *Building and Construction Industry Payments Act 2004 (Qld)*.
66. Where Plumbing & Backflow SEQ is required to provide Goods and/or Services (whether or not it constitutes Construction Work) at a site in the possession or under the control of the Client (**Site**), the Client must give Plumbing & Backflow SEQ (including its employees, contractors and agents) access to and possession of sufficient of the Site for at least as long as is necessary to enable Plumbing & Backflow SEQ to properly carry out and complete the provide Goods and/or Services.
67. Where the Client believes that there are any defects or omissions in the Goods and/or Services carried out by Plumbing & Backflow SEQ at the Site, then Plumbing & Backflow SEQ will inspect the Goods and/or Services and, if necessary, endeavour to make good any such defects or omissions in those Goods and/or Services within a reasonable time, provided that:
  - (a) the Client first provides written notice to Plumbing & Backflow SEQ detailing the alleged defects or omissions;
  - (b) Plumbing & Backflow SEQ is given reasonable access to the Site for both initial inspection and, where required, for carrying out any necessary make good works.

### **Notices**

68. Any formal notice by one party to the other required by these Terms and Conditions or an Agreement must be in writing, and sent to the address for a party with which it normally deals (or to such other address for service of notices that a party has advised to the other). Notices are taken to be received:
  - (a) if hand delivered, at the time of delivery;
  - (b) if posted, on the 3<sup>rd</sup> day after posting within Australia or the 5<sup>th</sup> day after posting for international mail;
  - (c) in the case of email or facsimile transmission, at the time of successful transmission.

### **General**

69. The failure by Plumbing & Backflow SEQ to enforce any provision of these Terms and Conditions will not be treated as a waiver of that provision, nor will it affect Plumbing & Backflow SEQ's Right to subsequently enforce that provision. If any provision of these Terms and Conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired thereby.
70. These Terms and Conditions and the Agreement will be governed by the laws of the State of Queensland, Australia, and are subject to the exclusive jurisdiction of the courts in that State.
71. The Client shall not be entitled to set off against, or deduct from the Service Charges, any sums owed or claimed to be owed to the Client by Plumbing & Backflow SEQ nor to withhold payment of any invoice because part of that invoice is in dispute.



72. Plumbing & Backflow SEQ may assign, license or sub-contract all or any part of its Rights and Obligations without the Client's consent.
73. Neither party will 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 that party.
74. The Client warrants that it has the power to enter into the Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that the Agreement creates binding and valid legal Obligations on it.
75. Neither these Terms and Conditions nor an Agreement based on them will be interpreted, construed or applied adversely to Plumbing & Backflow SEQ by reason of their having been drafted by or on behalf of Plumbing & Backflow SEQ.