



admin@a-listplumbing.com.au

www.a-listplumbing.com.au

0432 623 466

## A-LIST PLUMBING PTY LTD - TERMS AND CONDITIONS

### 1. General

1.1 - The Customer agrees that prior to placing an order with A-List Plumbing the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this agreement the term "A-List Plumbing" is successors and assigns and any person acting on behalf of and with authority of A-List Plumbing Pty Ltd; "Customer" is the person or business entity named on the Work Authorization / Quote provided by A-List Plumbing; "Goods" means plumbing products and associated components as more particularly described on A-List Plumbing's quotes, tax invoice and other paperwork supplied to the Customer; "Site" means the place where A-List Plumbing's work will be carried out; "Australian Consumer Law" means the Australian Consumer Law set out in schedule 2 of the Competition & Consumer Act 2010 (Cth) as amended from time to time.

### 2. Quotes

2.1 - A-List Plumbing shall give the Customer a quote specifying the work required to be done in order to fulfill the Customer's instructions and an estimate of A-List Plumbing's charge for the performance of the work.  
2.2 - Where A-List Plumbing has given the Customer a quote, A-List Plumbing need not commence work until the quote has been accepted by the Customer.  
2.3 - The Customer shall accept the quote by signing and returning a true copy of the quote and/or work authorization form accompanied with a purchase order number (if any). A signed facsimile or scanned emailed copy of the quote will be binding for the purposes of these terms and conditions.  
2.4 - Quotes are valid for 30 days only, unless an extension has been authorized by A-List Plumbing.  
2.5 - In acceptance of the quote, the Customer warrants that it has not relied on any representation by A-List Plumbing other than as supplied in writing in the quote.

### 3. Variations

3.1 - Variations to an accepted quote or contract, including, but not limited to concrete cutting and/or drilling in excess of 200mm, will incur additional costs to the Customer.  
3.2 - Variations within a period subject to a progress payment shall be payable at that time and no later.

### 4. Cancellations

4.1 - The Customer shall reimburse A-List Plumbing for any costs, expenses or losses incurred by A-List Plumbing should the Customer cancel an accepted quote or work authorization. The time for payment for such cancellation shall be 7 days from A-List Plumbing's invoice.

### 5. Prolongation

5.1 - Should Work at the Site be held up for reasons beyond the control of A-List Plumbing, then the Customer shall indemnify A-List Plumbing from any increased costs, losses or expenses due to such prolongation.

### 6. Dial before you Dig

6.1 - The Customer agrees to assist A-List Plumbing by obtaining plans of underground pipes and cables on the Site at least 2 clear working days before A-List Plumbing's proposed work on the Site. These plans can be requested from the DBYD (Dial before you dig) website at [www.1100.com.au](http://www.1100.com.au) or phone 1100.  
6.2 - Should the Customer fail to provide A-List Plumbing with the appropriate plans for the Site as specified in Clause 6.1, the Customer will indemnify A-List Plumbing from any claim for costs, expenses or losses from a third party, being the asset owner.

### 7. Delivery of Goods

7.1 - Delivery of the Goods shall be made to the Customer's nominated address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement. The failure of A-List Plumbing to deliver shall not entitle either party to treat this contract as repudiated. A-List Plumbing shall not be liable for any loss or damage whatever due to the failure by A-List Plumbing to deliver the Goods (or any part of them) promptly or at all.  
7.2 - The Customer shall indemnify A-List Plumbing from any costs incurred should Site access not be available and subsequently A-List Plumbing is unable to make delivery.

### 8. Site Access

8.1 - The Customer shall ensure that A-List Plumbing has clear and uninterrupted access to the Site until the Work has been completed and A-List Plumbing paid in full.  
8.2 - The Customer shall indemnify A-List Plumbing from additional costs or penalties if the completion of the Work is delayed due to interrupted Site access.

### 9. Risk

9.1 - The risk in the Goods shall pass to the Customer upon delivery/installation of the Goods to the Customer or to a third party nominated by the Customer.

### 10. Payment

10.1 - The Customer must, within the time specified in A-List Plumbing's quote and/or work authorization form, pay A-List Plumbing the total amount set out in the invoice.  
10.2 - A-List Plumbing may require a deposit from the Customer, and if a deposit is so requested by A-List Plumbing the Customer acknowledges A-List Plumbing is under no obligation to undertake any Work as requested by the Customer until the deposit is received by A-List Plumbing in full and when all details pertaining to contract are finalized. In the event of default of payment owing to A-List Plumbing on the part of the Customer, A-List Plumbing shall be entitled to forfeit the deposit and claim any profit or margin contemplated by or allowed from in the contract in addition to any remedy available to A-List Plumbing at law or in equity.  
10.3 - When agreed progress payments are not honoured by the Customer, A-List Plumbing reserves the right to halt any further work until such time as the outstanding payment is forthcoming. In addition interest (as specified in this clause) may be charged.  
10.4 - The provisions of the Building and Construction Industry Payments Act 2004 will apply to this agreement.  
10.5 - The hourly rate for work may change should A-List Plumbing hit a major obstacle including (without limitation) solid rock, requiring the hire of special equipment and if necessary an operator to complete the Work. The Customer shall be responsible for all costs and expenses associated with such hire and the daily hire rate shall apply.  
10.6 - A-List Plumbing may charge interest at the rate of 2% above the commercial lending rate of A-List Plumbing's bank or financial institution calculated on daily



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basis on amounts not paid within the time specified in the agreed quote and/or work authorization forms.

10.7 - The Customer must pay to A-List Plumbing any costs, expenses or losses incurred by A-List Plumbing as a result of the Customer's failure to pay to A-List Plumbing including (without limitation) debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

10.8 - The Customer shall:

- (a) Ensure the Customer or its representative remain on the Site during the performance of A-List Plumbing's work (if required);
- (b) Sign off that the Work has been completed by A-List Plumbing in accordance with the quote or work authorization form; and
- (c) Indemnify A-List Plumbing from any claims or charges relating to damage and/or loss of property from the Site if the Customer has not complied with the conditions specified in 10.8(a).

### 11. Retention of Title

11.1 - Notwithstanding the delivery of installation of the Goods, title in any particular Goods shall remain with A-List Plumbing until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by A-List Plumbing for the Goods, including all applicable GST and other taxes, levies and duties. Where the Goods have been on sold by the Customer, the Customer will be take to hold the proceeds of the sale of such Goods upon trust for A-List Plumbing and to account to A-List Plumbing for these proceeds.

Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge A-List Plumbing's title in the Goods nor the Customer's indebtedness to A-List Plumbing and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

11.2 - The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to Clause 11.1 and until that time the Customer must not encumber or otherwise charge the Goods and further the Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer.

11.3 - The Customer hereby irrevocably grants to A-List Plumbing the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and A-List Plumbing shall not be liable to the Customer or any person claiming through the Customer and A-List Plumbing shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to A-List Plumbing.

If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then A-List Plumbing may, without prejudice to any remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing to A-List Plumbing by the Customer.

### 12. Photos

12.1 - The Customer agrees that A-List Plumbing may take any and all photos of the Works at any stage as to comply with any and all regulations of any Statutory Authority. A-List Plumbing shall make any such photos of the Works available to the Customer upon request.

### 13. Personal Property Securities Act ("PPSA")

13.1 - In this Clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.

13.2 - The Customer acknowledges and agrees:

- (a) That these Terms and Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
  - a. Previously supplied by A-List Plumbing to the Customer;
  - b. To be supplied in the future by A-List Plumbing to the Customer.
- (b) That the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Goods (supplied now or in the future by A-List Plumbing to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release;
- (c) To waive its rights in relation to the sections listed in sub-section 115(1) of the PPSA (or otherwise amended), which will not apply (to the extent if any, mentioned) to the Security Agreement created by these Terms and Conditions.

13.3 - The Customer undertakes to:

- (a) Keep all Goods free of any charge, lien or Security Interest except as created under these Terms and Conditions and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under these Terms and Conditions or the PPSA;
- (b) Sign any further documents and provide any further information (which must be complete, accurate and up-to-date in all respects) that A-List Plumbing may require to:
  - a. Register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
  - b. Register any other document required to be registered by the PPSA; or
  - c. Correct a defect in a statement referred to in clause 13.3(b)a or 13.3(b)b.
- (c) Indemnify, and upon demand reimburse, A-List Plumbing for all fees (including legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
  - a. Registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and
  - b. Enforcing or attempting to enforce the Security Interest created by these Terms and Conditions.
- (d) Not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or



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Proceeds in favour of a third party, without the prior written consent of A-List Plumbing; and  
(e) Immediately advise A-List Plumbing of any material change in its business details (including, without limitation, its trading name, address, facsimile number) or business practices.

### 14. Warranty

14.1 - Any warranty as to the Goods on the part of the Customer shall be limited to the written warrant provided by the manufacturer to the Customer on or before the installation of the Goods.

14.2 - A-List Plumbing reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.

14.3 - A-List Plumbing shall not provide warranty on the Goods supplied by the Customer to be used in the Work by A-List Plumbing. 14.4 - In respect of all claims, A-List Plumbing shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.

### 15. Liability

15.1 - The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the goods and services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

15.2 - A-List Plumbing disclaims all conditions and warranties expressed or implied and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of A-List Plumbing for a breach of a Non-excludable Right is limited, at A-List Plumbing option, to the supply of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

15.3 - Notwithstanding any other provision of these Terms and Conditions, A-List Plumbing is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- (a) Any increased cost or expense;
- (b) Any loss of profit, revenue, business, contracts or anticipated savings;
- (c) Any loss or expense resulting from a claim by a third party; or
- (d) Any special, indirect or consequential loss or damage of any nature whatsoever caused by A-List Plumbing's failure to complete or delay in delivering the Goods or completed the work.

15.4 - A-List Plumbing will have no liability to the Customer in relation to any loss, damage or expense caused by A-List Plumbing's failure to deliver the Goods or complete the work as a result of fire, flood, tempest, earthquake, riot, civil disturbance,

theft, crime, strike, lockout, breakdown, war, the inability of A-List Plumbing's normal suppliers to supply necessary materials or any other matter beyond the control of A-List Plumbing.

### 16. Privacy

16.1 - The Customer hereby authorizes A-List Plumbing to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by A-List Plumbing, a debt collector, credit reporting agency, and/or any other individual or organization which maintains credit references and/or default listings.

16.2 - A-List Plumbing may give information about the Customer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Customer's credit file. This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

### 17. Security and Charge

17.1 - The Customer hereby charges all property both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to A-List Plumbing under these Terms and Conditions or otherwise and hereby authorizes A-List Plumbing or its solicitors to execute any consent form as its attorney for the purposes of registering a caveat over any real property owned by the Customer at any time.

### 18. Dispute Resolution

18.1 - Without prejudice to either party's rights under the Building and Construction Industry Payments Act 2004 and the Subcontractors' Charges Act 1974, either part may with the consent of the other party refer any dispute under, or arising out of, this Agreement to the Institute of Arbitrators and Mediators Australia, for resolution under the Rules of the Construction Industry Dispute Resolution Scheme. Each case will first be referred to a Conciliator appointed by the Institute unless each party wishes to proceed directly to arbitration. If the conciliation is not satisfactorily concluded within 6 weeks or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

### 19. No Waiver

19.1 - A power or right is not waived solely because a party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.



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### **20. Severability**

20.1 - Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

### **21. Governing Law and Jurisdiction**

21.1 - These Terms and Conditions are governed by the law in force in the State or Territory in which A-List Plumbing's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

### **22. Digital/Electronic Correspondence and Signatures**

22.1 The customer agrees to the use or exchange of digital and or electronic correspondence with Lumika and realises that it may be binding. 2.2 The customer agrees that digital/electronic signatures will be recognised as original signatures and as if the customer had signed the document itself and that it will be binding for the purposes of these terms and conditions