



## H2-Pro Plumbing Pty Ltd – Terms & Conditions of Trade

- and must sell, dispose of or return the resulting product to H2-Pro as it so directs;
- (f) unless the Materials have become fixtures the Client irrevocably authorises H2-Pro to enter any premises where H2-Pro believes the Materials are kept and recover possession of the Materials;
- (g) H2-Pro may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of H2-Pro;
- (i) H2-Pro may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 12. Personal Property Securities Act 2009 (“PPSA”)**
- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to H2-Pro for Works – that have previously been supplied and that will be supplied in the future by H2-Pro to the Client.
- 12.3 The Client undertakes to:
- (a) 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 H2-Pro may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
- (b) indemnify, and upon demand reimburse, H2-Pro for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of H2-Pro;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of H2-Pro;
- (e) immediately advise H2-Pro of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 12.4 H2-Pro and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by H2-Pro, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client shall unconditionally ratify any actions taken by H2-Pro under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of H2-Pro agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies H2-Pro from and against all H2-Pro's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising H2-Pro's rights under this clause.
- 13.3 The Client irrevocably appoints H2-Pro and each director of H2-Pro as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within two (2) days of delivery notify H2-Pro in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow H2-Pro to inspect the Materials or to review the Works provided.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.3 H2-Pro acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, H2-Pro makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. H2-Pro's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, H2-Pro's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If H2-Pro is required to replace any Materials under this clause or the CCA, but is unable to do so, H2-Pro may refund any money the Client has paid for the Materials.
- 14.7 If H2-Pro is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then H2-Pro may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 14.8 If the Client is not a consumer within the meaning of the CCA, H2-Pro's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by H2-Pro at H2-Pro's sole discretion;
- (b) limited to any warranty to which H2-Pro is entitled, if H2-Pro did not manufacture the Materials;
- (c) otherwise negated absolutely.
- 14.9 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
- (b) H2-Pro has agreed that the Materials are defective; and
- (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 14.10 Notwithstanding clauses 14.1 to 14.9 but subject to the CCA, H2-Pro shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials;
- (b) the Client using the Materials for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Works by the Client or any third party without H2-Pro's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by H2-Pro;
- (f) fair wear and tear, any accident, or act of God.
- 14.11 Notwithstanding anything contained in this clause if H2-Pro is required by a law to accept a return then H2-Pro will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where H2-Pro has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in H2-Pro, and shall only be used by the Client at H2-Pro's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of H2-Pro.
- 15.2 The Client warrants that all designs, specifications or instructions given to H2-Pro will not cause H2-Pro to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify H2-Pro against any action taken by a third party against H2-Pro in respect of any such infringement.
- 15.3 The Client agrees that H2-Pro may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which H2-Pro has created for the Client.
- 16. Default and Consequences of Default**
- 16.1 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 H2-Pro's sole discretion such interest shall compound monthly on a rate) after as well as before any judgment.
- 16.2 If the Client owes H2-Pro any money the Client shall indemnify H2-Pro from and against all costs and disbursements incurred by H2-Pro in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, H2-Pro's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies H2-Pro may have under this Contract, if a Client has made payment to H2-Pro, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by H2-Pro under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to H2-Pro's other remedies at law H2-Pro shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to H2-Pro shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to H2-Pro becomes overdue, or in H2-Pro's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by H2-Pro;
- (c) 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies H2-Pro may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions H2-Pro may suspend or terminate the supply of Works to the Client. H2-Pro will not be liable to the Client for any loss or damage the Client suffers because H2-Pro has exercised its rights under this clause.
- 17.2 H2-Pro may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice H2-Pro shall
- repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to H2-Pro for Works already performed. H2-Pro shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by H2-Pro as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 18. Privacy Policy**
- 18.1 All emails, documents, images or other recorded information held or used by H2-Pro is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. H2-Pro acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (“the Act”) including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). H2-Pro acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by H2-Pro that may result in serious harm to the Client, H2-Pro will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to H2-Pro in respect of Cookies where transactions for purchases/orders transpire directly from H2-Pro's website. H2-Pro agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to H2-Pro when H2-Pro sends an email to the Client, so H2-Pro may collect and review that information (“collectively Personal Information”).
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via H2-Pro's website.
- 18.3 The Client agrees for H2-Pro to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by H2-Pro.
- 18.4 The Client agrees that H2-Pro may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the 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 creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.5 The Client consents to H2-Pro being given a consumer credit report to collect overdue payment on commercial credit.
- 18.6 The Client agrees that personal credit information provided may be used and retained by H2-Pro for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Works.
- 18.7 H2-Pro may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
- (b) name of the credit provider and that H2-Pro is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and H2-Pro has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of H2-Pro, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Client shall have the right to request (by e-mail) from H2-Pro:
- (a) a copy of the Personal Information about the Client retained by H2-Pro and the right to request that H2-Pro correct any incorrect Personal Information; and
- (b) that H2-Pro does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.10 H2-Pro will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Client can make a privacy complaint by contacting H2-Pro via e-mail. H2-Pro will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Service of Notices**
- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 20. Trusts**
- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not H2-Pro may have notice of the Trust, the Client covenants with H2-Pro as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of H2-Pro (H2-Pro will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 21. General**
- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which H2-Pro has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 21.3 Subject to clause 14, H2-Pro shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by H2-Pro of these terms and conditions (alternatively H2-Pro's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 21.4 H2-Pro may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of H2-Pro.
- 21.6 H2-Pro may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give an instruction to any of H2-Pro's subcontractor's without the authority of H2-Pro.
- 21.7 The Client agrees that H2-Pro may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for H2-Pro to provide Works to the Client.
- 21.8 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.
- 21.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.