

Under Control Pty Ltd T/A Dr Drains – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Dr Drains" means Under Control Pty Ltd T/A Dr Drains, its successors or assigns or any person acting on behalf of and with the authority of Under Control Pty Ltd T/A Dr Drains.</p> <p>1.2 "Client" means the persons ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>1.3 "Works" means all Works or Materials supplied by Dr Drains to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable for the Works as agreed between Dr Drains and the Client in accordance with clause 4 below.</p> <p>2. Acceptance</p> <p>2.1 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 delivery of any Works.</p> <p>2.2 These terms and conditions may only be amended with Dr Drains' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Dr Drains.</p> <p>3. Change in Control</p> <p>3.1 The Client shall give Dr Drains not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by Dr Drains as a result of the Client's failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At Dr Drains' sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by Dr Drains to the Client in respect of Works performed or Materials supplied; or</p> <p>(b) Dr Drains' quoted Price pursuant to clause 4.2) which shall be binding upon Dr Drains provided that the Client shall accept Dr Drains' quotation in writing within thirty (30) days.</p> <p>4.2 Dr Drains reserves the right to change the Price:</p> <p>(a) if a variation to the Materials which are to be supplied is requested; or</p> <p>(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured building defects, safety considerations, prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or</p> <p>(d) in the event of increase to Dr Drains in the cost of labour or materials which are beyond Dr Drains' control.</p> <p>4.3 At Dr Drains' sole discretion a non-refundable deposit may be required.</p> <p>4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the dates determined by Dr Drains, which may be:</p> <p>(a) on completion of the Works; or</p> <p>(b) by way of progress payments in accordance with Dr Drains' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Dr Drains.</p> <p>4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed between the Client and Dr Drains.</p> <p>4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Dr Drains an amount equal to any GST Dr Drains must pay for any supply by Dr Drains under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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>5. Delivery of the Works</p> <p>5.1 Subject to clause 5.2 it is Dr Drains' responsibility to ensure that the Works start as soon as it is reasonably possible.</p> <p>5.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Dr Drains claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Dr Drains' control, including but not limited to any failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Works; or</p> <p>(c) notify Dr Drains that the site is ready.</p> <p>5.3 At Dr Drains' sole discretion the cost of delivery is included in the Price.</p> <p>5.4 Dr Drains may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>5.5 Any time or date given by Dr Drains to the Client is an estimate only. Dr Drains shall not be liable for any loss or damage whatsoever due to failure by Dr Drains to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Dr Drains.</p> <p>6. Risk</p> <p>6.1 If Dr Drains retains ownership of the Materials under clause 10 then;</p> <p>(a) where Dr Drains is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by Dr Drains or Dr Drains' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); and</p> <p>(b) where Dr Drains is to both supply and install Materials then Dr Drains shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.</p> <p>6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests Dr Drains to leave Materials outside Dr Drains' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.</p> <p>6.3 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Dr Drains is requested to merely clear such blockages, Dr Drains can offer no guarantee against recurrence or further damage. In the event of collapse during the pipe clearing process, Dr Drains will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.</p> <p>6.4 The Client acknowledges that curing times for pipe relining systems may vary depending on prevailing weather conditions. Dr Drains shall not be liable to Client in any way whatsoever for delays caused by the curing process.</p> <p>6.5 The Client acknowledges that Dr Drains is only responsible for parts that are replaced by Dr Drains and that in the event that other parts/Materials subsequently fail, the Client agrees to indemnify Dr Drains against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.</p> <p>6.6 Where Dr Drains is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Dr Drains 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>6.7 Where Dr Drains gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the use of the Materials and such advice or recommendations are not acted upon then Dr Drains shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.</p> <p>6.8 Any advice, recommendation, information, assistance or service provided by Dr Drains in relation to the Materials or Works supplied is given in good faith, is based on Dr Drains' own knowledge and experience and shall be accepted without liability on the part of Dr Drains and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.</p> <p>7. Access</p> <p>7.1 The Client shall ensure that Dr Drains has clear and free access to the work site at all times to enable them to undertake the Works. Dr Drains shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Dr Drains.</p> <p>8. Underground Locations</p> <p>8.1 Prior to Dr Drains commencing any work the Client must advise Dr Drains of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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>8.2 Whilst Dr Drains will take all care to avoid damage to any underground services the Client agrees to indemnify Dr Drains in respect of all any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.</p> <p>9. Compliance with Laws</p> <p>9.1 The Client and Dr Drains shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the work.</p> <p>9.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.</p> <p>9.3 The Client 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>10. Title</p> <p>10.1 Dr Drains and the Client agree that ownership of the Materials shall not pass until:</p> <p>(a) the Client has paid Dr Drains all amounts owing to Dr Drains; and</p> <p>(b) the Client has met all of its other obligations to Dr Drains.</p> <p>10.2 Receipt by Dr Drains 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>10.3 It is further agreed that:</p> <p>(a) until ownership of the Materials passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Dr Drains on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Materials on trust for Dr Drains and must pay to Dr Drains the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;</p> <p>(c) the production of these terms and conditions by Dr Drains shall be sufficient evidence of Dr Drains' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Dr Drains to make further enquiries;</p> <p>(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Dr Drains and must pay or deliver the proceeds to Dr Drains on demand;</p> <p>(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Dr Drains and must sell, dispose of or return the resulting product to Dr Drains as it so directs.</p> <p>(f) unless the Materials have become fixtures the Client irrevocably authorises Dr Drains to enter any premises where Dr Drains believes the Materials are kept and recover possession of the Materials;</p> <p>(g) Dr Drains may recover possession of any Materials in transit whether or not delivery has occurred;</p> <p>(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 Dr Drains.</p> <p>(i) Dr Drains may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.</p> <p>11. Personal Property Securities Act 2009 ("PPSA")</p> <p>11.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>11.2 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 that have previously been supplied and that will be supplied in the future by Dr Drains to the Client.</p> <p>11.3 The Client undertakes to:</p> <p>(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 Dr Drains may reasonably require to:</p> <p>(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, Dr Drains for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;</p> <p>(c) to register a financing charge statement in respect of a security interest without the prior written consent of Dr Drains;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Materials in favour of a third party without the prior written consent of Dr Drains; and</p> <p>(e) immediately advise Dr Drains 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.</p> <p>11.4 Dr Drains 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.</p> <p>11.5 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.</p> <p>11.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>11.7 Unless otherwise agreed to in writing by Dr Drains, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>11.8 The Client shall unconditionally ratify any actions taken by Dr Drains under clauses 11.3 to 11.5.</p> <p>11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>12. Security and Charge</p> <p>12.1 In consideration of Dr Drains 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 monies).</p> <p>12.2 The Client indemnifies Dr Drains from and against all Dr Drains' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Dr Drains' rights under this clause.</p> <p>12.3 The Client irrevocably appoints Dr Drains and each director of Dr Drains as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.</p> <p>13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>13.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Dr Drains 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 Dr Drains to inspect the Materials or to review the Works provided.</p> <p>13.2 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).</p> <p>13.3 Dr Drains acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Dr Drains makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Dr Drains' liability in respect of these warranties is limited to the fullest extent permitted by law. If the Client is a consumer within the meaning of the CCA, Dr Drains' liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>13.6 If Dr Drains is required to replace any Materials under this clause or the CCA, but is unable to do so, Dr Drains may refund any money the Client has paid for the Materials.</p> <p>13.7 If Dr Drains 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 Dr Drains 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.</p> <p>13.8 If the Client is not a consumer within the meaning of the CCA, Dr Drains' liability for any defect or damage in the Materials is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by Dr Drains at Dr Drains' sole discretion;</p> <p>(b) limited to any warranty to which Dr Drains is entitled, if Dr Drains did not manufacture the Materials;</p> <p>(c) otherwise negated absolutely.</p> <p>13.9 Subject to this clause 13, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 13.1; and</p> <p>(b) Dr Drains has agreed that the Materials are defective; and</p> <p>(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.</p> <p>13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, Dr Drains shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Materials;</p> <p>(b) the Client using the Materials for any purpose other than that for which they were designed;</p> <p>(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;</p> <p>(d) interference with the Works by the Client or any third party without Dr Drains' prior approval;</p> <p>(e) the Client failing to follow any instructions or guidelines provided by Dr Drains;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>13.11 Dr Drains may in its absolute discretion accept non-defective Materials for return in which case Dr Drains may require the Client to pay handling fees up to twenty percent (20%) of the value of the returned Materials plus any freight costs.</p> <p>13.12 Notwithstanding anything contained in this clause if Dr Drains is required by a law to accept a return then Dr Drains will only accept a return on the conditions imposed by that law.</p> <p>14. Intellectual Property</p> <p>14.1 Where Dr Drains 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 Dr Drains, and shall only be used by the Client at Dr Drains' discretion.</p> <p>14.2 The Client warrants that the Client's specifications or instructions given to Dr Drains will not cause Dr Drains to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Dr Drains against any action taken by a third party against Dr Drains in respect of any such infringement.</p> <p>14.3 The Client agrees that Dr Drains may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Dr Drains has created for the Client.</p> <p>15. Default and Consequences of Default</p> <p>15.1 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 Dr Drains' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>15.2 If the Client owes Dr Drains any money the Client shall indemnify Dr Drains from and against all costs and disbursements incurred by Dr Drains in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Dr Drains' contract default fee, and bank dishonour fees).</p> <p>15.3 Without prejudice to any other remedies Dr Drains may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Dr Drains may suspend or terminate the supply of Works to the Client. Dr Drains will be liable to the Client for any loss or damage the Client suffers because Dr Drains has exercised its rights under this clause.</p> <p>15.4 Without prejudice to Dr Drains' other remedies at law Dr Drains shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Dr Drains shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Dr Drains becomes overdue, or in Dr Drains' opinion the Client is unable to make a payment when it falls due.</p> <p>(b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>16. Cancellation</p> <p>16.1 Dr Drains 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 Dr Drains shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Dr Drains for Works already performed. Dr Drains shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>16.2 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 Dr Drains as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>16.3 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>17. Privacy Act 1988</p> <p>17.1 The Client agrees for Dr Drains to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Dr Drains.</p> <p>17.2 The Client agrees that Dr Drains may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(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</p> <p>(d) to assess the creditworthiness of the Client.</p> <p>17.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.</p> <p>17.4 The Client consents to Dr Drains being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>17.5 The Client agrees that personal credit information provided may be used and retained by Dr Drains for the following purposes (and for other purposes as shall be agreed between the Client and Dr Drains or required by law from time to time):</p> <p>(a) the provision of Works; and/or</p> <p>(b) the marketing of Works by Dr Drains, its agents or distributors; and/or</p> <p>(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in relation to the Client's account.</p> <p>17.6 Dr Drains may give information about the Client to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Client;</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.</p> <p>17.7 The information given to the credit reporting agency may include:</p> <p>(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);</p> <p>(b) details concerning the Client's application for credit or commercial credit and the amount requested;</p> <p>(c) advice that Dr Drains is a current credit provider to the Client;</p> <p>(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which have overdue by more than sixty (60) days; and/or for which debt collection action has been started;</p> <p>(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;</p> <p>(f) information that, in the opinion of Dr Drains, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);</p> <p>(g) advice that these debts drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;</p> <p>(h) that credit provided to the Client by Dr Drains has been paid or otherwise discharged.</p> <p>18. Other Applicable Legislation</p> <p>18.1 At Dr Drains' sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales) and the Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.</p> <p>18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 18.1 (each as applicable), except to the extent permitted by the Act where applicable.</p> <p>19. General</p> <p>19.1 The failure by Dr Drains to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Dr Drains' 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>19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Australian Capital Territory, in which Dr Drains has its principal place of business, and are subject to the jurisdiction of the Canberra Courts in that state.</p> <p>19.3 Subject to clause 13 Dr Drains 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 Dr Drains of these terms and conditions (alternatively Dr Drains' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).</p> <p>19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Dr Drains nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>19.5 Dr Drains may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>19.6 The Client agrees that Dr Drains may amend these terms and conditions at any time. If Dr Drains does make a change to these terms and conditions, then that change will take effect from the date on which Dr Drains notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Dr Drains to provide any Works to the Client.</p> <p>19.7 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>19.8 The Client 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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