

# OUR TERMS AND CONDITIONS

## 1. RECORDAL

It is recorded that -

- 1.1. The Contractor operates a business specialized in Plumbing works;
- 1.2. The Client is desirous to have Plumbing and related works done at their premises; and
- 1.3. Therefore the parties agree as set out herein.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

<b>"Calendar Day"</b>	Calendar Day means each consecutive day in a calendar year, including weekends and public holidays;
<b>"Client"</b>	means the party to whom the Quotation, together with these Terms and Conditions, were made out to and issued;
<b>"Contractor"</b>	means the Plumbing Business known as Hibiscus Plumbing Services (Pty) Ltd. with Registration Number 2025/680046/07;
<b>"Effective Date"</b>	shall be the Signature Date of the Client's written acceptance of the Quotation and these Terms and Conditions;
<b>"Parties"</b>	means the collective reference to both the 'Client' and the 'Contractor', and any reference to "a Party" shall refer to one of the relevant Parties as required by the context;
<b>"Premises"</b>	means the Premises at which the Works are to be done and which have been described in more detail on the Pre-Quotation Estimate, as well as the Quotation to which these Terms and Conditions are attached;
<b>"Quotation"</b>	means the Quotation to which these Terms and Conditions are attached;
<b>"Schedule"</b>	means any schedule to the main body of this Agreement;
<b>"Signature Date"</b>	means the date on which the Client provides written acceptance of the Quotation together with the Terms and Conditions attached thereto;
<b>"Terms and Conditions"</b>	means these Terms and Conditions;
<b>"Utility Services"</b>	means any products, services, equipment and infrastructure related, but not limited to energy, telecommunications, water and sewerage;
<b>"Works"</b>	shall be the Works to be completed by the Contractor and will be identified as per the accepted Quotation to which these Terms and Conditions are attached.

These Terms and Conditions shall be interpreted according to the following provisions, unless the context requires otherwise:

- 2.1.1. References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement.
- 2.1.2. References to **"Parties"** shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.
- 2.1.3. References to a **"person"** shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.
- 2.1.4. References to **"clauses"**, **"sub-clauses"** and **"Schedules"** are references to the clauses, sub-clauses and schedules of these Terms and Conditions.
- 2.1.5. The headings of clauses, sub-clauses are included for convenience only and shall not affect the interpretation of these Terms and Conditions.
- 2.1.6. The Client acknowledges that they have had the opportunity to take legal advice concerning these Terms and Conditions, and agree that no provision or word used in these Terms and Conditions shall be interpreted to the disadvantage of either Party only because that Party was responsible for or participated in the preparation or drafting of these Terms and Conditions.
- 2.1.7. Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 2.1.8. References to **"these Terms and Conditions"** shall include these Terms and Conditions as amended, varied, novated or substituted in writing from time to time.
- 2.1.9. General words preceded or followed by words such as **"other"** or **"including"** or **"particularly"** shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words.
- 2.1.10. If any definition in clause 2.1 (*Definitions*) contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of these Terms and Conditions.

## 3. COMPLETION OF WORKS

- 3.1. The Contractor hereby undertakes to execute and complete in a thorough and workmanlike manner and with the best materials (or with materials provided by the Client) all the Works, further described in the accepted Quotation to which these Terms and Conditions are attached.
- 3.2. The Client acknowledges that they have made their own assessment as to the condition, quality, value, suitability and fitness for the purpose of making use of the Contractor to perform the Works outlined in the Quotation.
- 3.3. The work to be performed under the Quotation shall be commenced on a date agreed between the Parties in writing and shall be completed by a subsequent date as agreed to in writing between the Parties or as soon as reasonably possible.
- 3.4. The Contractor shall not be liable or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform any of the Works, if the delay or failure was due to any cause beyond the Contractor's control, including but not limited to an Act of God, a government act, fire explosion, an accident, the discovery of hazardous material, civil commotion or industrial disputes.
- 3.5. Upon the Materials, Equipment and Contractor's tools being delivered to the Client, a dry and protected area, within the Premises, will be assigned to the Contractor without cost, for storage of the Materials, Equipment and the Contractor's tools, until such time as the Works have been completed.
- 3.6. The Client undertakes to point out any utility services to the Contractor prior to the commencement of any work being done at the Premises. The Contractor will not be held accountable for any damages to any utility services in the event where the Client is unable to correctly point out the same or only points it out after work has already commenced.

- 3.7. Should the Client be unable to point out the utility services, the Contractor can arrange for specialised equipment to be obtained, in order to locate the utility services. This can be quoted on, upon receiving a request from the Client to do so, and will, furthermore, be for the Client's account.
- 3.8. Any pointing out of utility services or requests to obtain specialised equipment to locate utility services, by the Client, needs to be reduced to writing and be sent through to the offices of the Contractor, whose details are outlined and described in more detail in the Quotation.
- 3.9. The Quotation is broken down and specified in quantities for the attention of the Client. Should the Client feel that the quantities are not sufficient to complete the Works specified in the Quotation, then the Client needs to bring this to the attention of the Contractor in writing, prior to any work being commenced at the Premises, for the Contractor to remeasure the quantities and work area and, if necessary, provide an amended Quotation.
- 3.10. The Client undertakes to effect payment for the work quoted on, as described in the Quotation, in accordance with the Payment terms outlined and stipulated in the Quotation provided.
- 3.11. The Client agrees that no work shall commence until the Contractor has received the Client's written acceptance of the Quotation together with the Terms and Conditions attached thereto.
- 3.12. The Client shall not be entitled to set off against, or deduct from the Final Invoiced Amount, sums owed or claimed to be owed, whether it be materials, monetary value or Works to be performed, to the Client by the Contractor, nor to withhold payment of any Invoices because part of that Invoice is in dispute.

#### 4. ACCESSING THE PREMISES

- 4.1. The Client grants the Contractor permission to enter and remain at the Premises, and to have the Contractor's employees enter and remain at the Premises, to:
  - 4.1.1. conduct one or more site inspections, if necessary; and
  - 4.1.2. complete all the Works, as mentioned in the Quotation.
- 4.2. The Client undertakes to:
  - 4.2.1. ensure that the Contractor and its employees have convenient and safe access to all parts of the Premises necessary to conduct any required site inspections or to complete the Works during normal working hours, which are Mondays to Fridays, 08:00 to 17:00. (*Special arrangements will be made for access outside of these hours*);
  - 4.2.2. not hinder or obstruct this access; and
  - 4.2.3. ensure that the Premises, including its roof, supporting structures and electrical wiring, are sound and able to accommodate the completion of the Works.
- 4.3. The Client acknowledges that the Contractor can only Quote on what can be seen on the Surface and that additional costs may apply if the Contractor and/or its employees:
  - 4.3.1. identify unanticipated factors that affect the ability to properly and safely complete the Works;
  - 4.3.2. find the presence of hazardous materials such as asbestos at the premises;
  - 4.3.3. encounter difficulties in gaining access requiring additional equipment necessary to complete the works;
  - 4.3.4. encounter any servitude restrictions and conditions;
  - 4.3.5. encounter any utility services;
  - 4.3.6. identify any unsuitable or unusable material.
- 4.4. Any additional costs, as mentioned above, will be Quoted on separately, the Quote to be sent to the Client for the Client's written approval. If this additional Quotation is not accepted by the Client, the Contractor will stop all current work at the Premises until such time as the problem(s) identified has been rectified. The Contractor will be entitled to claim Pro-Rata payment for all work commenced up to such time as the work stopped.

#### 5. DELIVERY AND RISK

- 5.1. The Client shall take delivery of the Materials, Equipment and Contractor's tools and shall store the Materials, Equipment and Contractor's tools in terms of Clause 3.3 until such time as the Works have been completed.
- 5.2. The risk of theft, damage to, or destruction of, the Materials, Equipment and Contractor's tools shall remain with the Contractor.
- 5.3. It is the Client's responsibility to ensure that they notify their insurance of the Works being completed at the premises. It is, furthermore, the Client's responsibility to insure the Premises, the Client's Assets and other surrounding structures, in accordance with generally accepted good industry practice at the replacement value thereof, against theft, damage and/or destruction with such insurers and at Terms and Conditions to the reasonable satisfaction of the Client.
- 5.4. The Client shall provide to the Contractor the full particulars of the insurance contemplated in clause 5.3, as well as written proof that the insurance has been taken out and maintained, upon the request of the Contractor.
- 5.5. The Contractor can only account for and insure their direct work and any damages limited to this. Any damages to Assets and surrounding structures, not as a direct result of any fault of the Contractor, will not be covered by the Contractor and it is the Client's responsibility to claim such damages from their Insurance, as mentioned in clause 5.3.
- 5.6. The Client shall, in such circumstances where the Client is responsible for Security of the Materials and where the Materials are left unusable, not limited to theft, damage and/or destruction by any person or event, where the Client failed to take out the required insurance, as contemplated in clause 5.3, and/or the insurance company repudiates the claim for any reason whatsoever, be liable for payment of any and all monies due and owing to the Contractor or refund the Contractor any and all monies which the Contractor has reasonably paid in terms of completing the Works in terms of the Quotation and these Terms and Conditions.

#### 6. BREACH

Should any of the Parties ("defaulting party") commit any breach of any of these Terms or Conditions and fail to remedy such breach within 10 (ten) Calendar days of receipt of a notice from the other Party ("non-defaulting party") calling upon the defaulting party to rectify such breach, the non-defaulting party shall, without prejudice to any other rights which they may have, be entitled to cancel the Agreement for Works to be done, as described in Clause 1 of these Terms and Conditions and the Quotation to which they are attached. The non-defaulting party will be entitled to recover costs from the defaulting party on an attorney and own client scale.

#### 7. GUARANTEE

- 7.1. The Contractor guarantees all of the work, as outlined in the Quotation and provided for by them, against defects in materials or workmanship for a period of 6 (six) months, following the date of the Works being completed and the final acceptance of such work by the Client. This guarantee is limited to any defects or failure of any part of the work due to poor or defective workmanship, materials and/or equipment. Any tampering and/or negligence and/or work commenced by any other Contractor or Supplier to the Works completed by the Contractor will void the abovementioned guarantee and the replacement and/or repair costs in such circumstances will be at the Client's expense.
- 7.2. Any defects to the work shall be communicated to the Contractor within 7 (seven) days of noticeable defect.

- 7.3 The Contractor shall be afforded an opportunity to within 14 (fourteen) days from receipt of such an alleged defect report, inspect the defects and / or workmanship which does not meet with the Client's approval and;
- 7.3.1 If the Contractor is of the view that the work and / or defects are of acceptable standard, it shall notify the Client, in writing, of its findings and its reasons related thereto; however
- 7.3.2 If the Contractor is of the view that the work is of an unacceptable standard or that there are any defects in the workmanship or supplied materials, then the work and / or defect shall be rectified, within a period of 14 (fourteen) days, to the reasonable satisfaction of the Client, at the Contractor's cost.
- 7.4 If the Client does not notify the Contractor within 3 (three) months from date of completion of repairs, of any noticeable defects in the workmanship and / or material, then it shall be deemed to have been completed to the reasonable satisfaction of the Client, and the Client shall have no further right of recourse against the Contractor in respect of any repairs and / or defects.

## 8. MISCELLANEOUS

- 8.1. No Party may without the prior written consent of the other Party, delegate, assign, cede, transfer or in any other way alienate or dispose of any of its rights or obligations in terms of these Terms and Conditions to any other person, which consent may not be unreasonably withheld.
- 8.2. No provision of these Terms and Conditions (including, without limitation, the provisions of this clause and the accepted Quotation to which these Terms and Conditions are attached) may be amended, substituted or otherwise varied. No provision may be added to or incorporated in these Terms and Conditions or the accepted Quotation, except (in any such case) by an agreement in writing signed by the duly authorised representatives of both the Parties.
- 8.3. Any relaxation, indulgence or delay (collectively referred to as "Indulgence") by either Party in exercising, or any failure by either Party to exercise, any rights under these Terms and Conditions shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 8.4. The waiver of any right under these Terms and Conditions shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorized representative(s) of the waiving Party.
- 8.5. These Terms and Conditions supersede all prior agreements, representations, communications, negotiations and understandings between the Parties concerning the subject matter of these Terms and Conditions and the Quotation to which they are attached.
- 8.6. Whenever possible, each provision of these Terms and Conditions shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions, all of which shall remain in full force.
- 8.7. These Terms and Conditions shall govern all aspects of and all contractual relationships relating to the completion of the Works by the Contractor to the Client in terms hereof. In the event of any conflict between these Terms and Conditions and any associated agreement on any matter affecting the Parties, including all questions of interpretation, these Terms and Conditions shall prevail.
- 8.8. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query, breach notice or request) by either Party in terms of these Terms and Conditions or relating to it shall be given in writing, and shall be sent by registered post, or delivered by hand, or transmitted by electronic mail to the recipient Party at its relevant address set out in the Pre-Quotation Estimate and the Quotation to which these Terms and Conditions are attached.
- 8.9. Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.
- 8.10. Any notice or other communication given by any Party to the other Party which –
- 8.10.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; or
- 8.10.2. is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
- 8.10.3. is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be rebuttably presumed to have been received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 8.11. If any address of any of the Parties are changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa.
- 8.12. The Parties agree to perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by Law or as may be desirable or necessary to implement or give effect to this Agreement and the transactions contemplated therein.
- 8.13. By entering into this Agreement, the Parties warrant that there are no impediments or restrictions to their doing so and that this Agreement does not violate the provisions of any Agreement between any of the Parties and any third party.
- 8.14. The signatory of the Acceptance hereby binds themselves in their personal capacity as Shareholder (in the case of a company), Member (the case of a close corporation) or Owner, Partner, or Proprietor, as co-principal debtor jointly for the full amount due to the Contractor and agrees that these Terms and Conditions will apply in the same way to them.
- 8.15. Ownership of all materials supplied to the Client by the Contractor shall remain vested in the Contractor until payment in full has been received from the Client. This retention of ownership shall apply irrespective of whether the works have been completed in whole or in part. In the event of non-payment of any amounts lawfully due by the Client, the Contractor shall be entitled, without prejudice to any other rights or remedies available under South African law, to remove such materials and/or to reverse the works performed and restore the premises to its original state.
- 8.16. Any non-payment that results in legal action having to be taken will result in the Client being responsible for all legal cost, interest, tracing and collection fees.
- 8.17. The Client agrees that interest may be charged on any late payments at the maximum rate allowed for, as prescribed by the National Credit Act and the Prescribed Rate of Interest Act, from time to time.
- 8.18. If the Client supplies any material, products or equipment, and or accessories, the Contractor shall not be responsible for any defect thereto, nor the quality thereof. Any extra costs incurred through the use of defective materials or equipment supplied shall be for the Client's account.

## 9. JURISDICTION

For the purpose of all proceedings hereunder the Parties consent to the jurisdiction of the Magistrate's Court having territorial jurisdiction under section 28 of the Magistrate's Court Act pursuant to section 45 of that same Act.

## 10. GOVERNING LAW

These Terms and Conditions shall in all respects be Governed by and Construed in accordance with the Laws of the Republic of South Africa.