

TERMS AND CONDITIONS

This is a contract is under the Construction Contracts Act 2002 If you have any questions, please contact us at any time.

1. Definitions

- 1.1. "Customer" shall mean the Customer referred to in the quote.
- 1.2. "Goods" shall mean Works and Materials collectively.
- 1.3. "Materials" shall mean Materials required to complete the Works.
- 1.4. "Owner" shall mean the Owner of the premises where the Works are being undertaken, or any person acting with the written authority of the Owner.
- 1.5. "Builder" shall mean JDC Carpentry and Construction Pty Ltd ABN 80 677 186 579 or any person acting with its written authority.
- 1.6. "Price" shall mean the Price of the Works as agreed between the Builder and the Owner.
- 1.7. "Work" shall mean all Works (including the supply of Materials) undertaken by the Builder and described in this contract and includes any advice or recommendations.

2. Acceptances

- 2.1. By accepting service, the Customer has accepted these terms and conditions and has obtained legal advice concerning the contract or has had the opportunity to obtain legal advice concerning this contract and has elected not to obtain such advice.
- 2.2. The Customer is jointly and severally liable for all payments of the Price.
- 2.3. The Customer shall not rely on any representations, statements, conditions, or agreements made by the Builder's agents or representatives, unless expressly made by the Builder in writing to the Customer.

3. Variations

- 3.1. If the Customer requests a variation the Builder will give the Customer a written variation document detailing the Works, the amended Price, the estimated time to undertake the variation, and the estimated delay, if any. The Builder will require written acceptance by the Customer of the variation before commencing Work on the variation, except in the case of an emergency as described in clause.
- 3.2. The Builder may carry out any necessary Works in the event of:
 - 3.2.1. unforeseeable problems with the site which are only revealed when undertaking the Works which the Builder considers should be rectified for the safe completion of the Works; or
 - 3.2.2. any Works that the Builder considers are required to be undertaken urgently and it is not reasonably practicable to obtain written acceptance from the Customer before commencing the variation; or
 - 3.2.3. the Builder being instructed to undertake extra Works by any person to comply with the Home Building Act 1989 (NSW).
- 3.3. The additional Works in clause 3.2 are to be treated as a variation. If a Price is not agreed upon prior to the Works, then the Owner will be charged at the Builder's actual cost plus twenty (20%) percent for the Works.

4. Price and Payment

- 4.1. Time for payment of the Works shall be of the essence and will be stated in the invoice. If no time is stated, payment shall be due seven (7) days from the date of the invoice.
- 4.2. The Price shall be increased by the amount of any GST and other applicable taxes and duties.
- 4.3. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Builder.

5. Late Payment Fees

- 5.1. If an invoice remains unpaid after thirty (30) days, the Builder may issue a formal Letter of Demand and recover any reasonable costs incurred in relation to debt recovery, including legal and administrative expenses.
- 5.2. If any invoice remains unpaid for more than thirty (30) days from the due date, the Builder reserves the right to charge interest on the outstanding amount at a rate of 10% per week, and accruing until payment is received.
- 5.3. The Customer agrees that such interest charges represent a genuine pre-estimate of the loss suffered by the Builder due to late payment and are not a penalty.

6. Risk and Insurance

- 6.1. All risk for the Works passes to the Customer on delivery.
- 6.2. The Builder shall have public liability insurance of at least \$5 million. It is the Customer's responsibility to ensure that they are similarly insured.
- 6.3. The Customer shall ensure that any building sites will comply with all NSW occupational health and safety laws relating to building sites and any other relevant safety standards and legislation.

7. Defects

- 7.1. The Customer shall inspect the Works on delivery and shall within seven (7) days of delivery notify the Builder in writing of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote.
- 7.2. The Customer shall provide the Builder the opportunity to inspect the Works within a reasonable time following delivery. If the Customer fails to comply with these provisions, the Works are deemed to be in accordance with the terms and conditions and free from any defect or damage.

8. Title

- 8.1. It is the intention of the Builder and agreed by the Customer that Ownership of Materials shall not pass until:
 - 8.1.1. the Customer has paid all amounts owing for the Materials; and
 - 8.1.2. the Customer has met all other obligations owing to the Customer to the Builder in respect of all contracts between the Builder and the Customer.

8. Warranty & Builder's Liability

- 8.1. The Builder shall not be liable for any loss or damage whatsoever due to failure by the Builder to deliver the Works or any part of them promptly.
- 8.2. To the extent required by the Home Building Act 1989, the Builder warrants that:
 - 8.2.1. The Works shall be carried out in a proper and workmanlike manner.
 - 8.2.2. All Materials supplied be suitable for the purpose for which they are used and that unless otherwise stated in this contract, those Materials will be new; and the Works will be carried out in accordance with all relevant laws and legal requirements.
- 8.3. For Material not manufactured by the Builder, the warranty shall be the current warranty provided by the manufacturer of the Material. The Builder shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers' warranty.
- 8.4. Warranty shall be valid for 10 years from the invoice date. Warranty shall only be valid on exact location & works as carried out by the Builder. The Customer must provide an invoice for proof of work.
- 8.5. All valve & valve type parts as well as any specified items installed by the Builder must be serviced annually by the Builder. Failure to do so shall void all warranty. It is the sole responsibility of the Customer to arrange an appointment.
- 8.6. The Builder shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Builder of this contract.
- 8.7. The remedies of the Customer shall be limited to replacement of the Works and/or damages, limited to the Price of the Works.
- 8.8. Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm, or other event beyond the reasonable control of either party.



9. Default & Consequences of Default

- 9.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2.5% per calendar month compounded monthly.
- 9.2. The Customer shall indemnify the Builder from and against all costs and disbursements incurred by the Builder in pursuing the debt including legal costs on a solicitor and own client basis.
- 9.3. Without prejudice to any other remedies the Builder may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Builder may suspend or terminate the supply of Works to the Customer. The Builder will not be liable to the Customer for any loss or damage the Customer suffers because the Builder exercised its rights under this clause.

10. Cancellation

- 10.1. The Builder may terminate this contract by providing the Customer at least 3 business days' notice in writing. The Builder shall not be liable for any loss or damage whatsoever arising from such termination.
- 10.2. The Customer must provide the Builder with at least 3 business days' notice in writing of any cancellation of works. Failure to do so will incur a cancellation fee equivalent to 30% of the quoted Works.
- 10.3. Payment of a deposit constitutes acceptance of the terms of the contract. Deposits are nonrefundable.

11. General

- 11.1. In the event of any inconsistencies between the Terms and Conditions of Trade and the quote, the conditions in the quote shall prevail.
- 11.2. If any provision of this contract shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 11.3. These terms and conditions and any contract to which they apply shall be governed by the laws of NSW and are subject to the jurisdiction of the courts of NSW.
- 11.4. The Builder may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 11.5. The failure by the Builder to enforce any provision of this contract shall not be treated as a waiver of that provision, nor shall it affect the Builder's right to subsequently enforce that provision.
- 11.6. All Compliance Certificates will not be issued to any projects if all outstanding Invoices for the relevant project are not paid up-to-date.

12. Client/Employee Relationship:

- 12.1. The Client/Builder agrees that during the term of this Agreement and for a period of 12 months following its termination or expiry, the Client will not directly or indirectly solicit, recruit, engage or employ any employee, subcontractor or consultant of JDC Carpentry & Construction Pty Ltd.
- 12.2. In the event the Client breaches this clause the Client agrees to pay to the Company, as a genuine pre-estimate of loss, an amount equal to \$18,000.00 per affected employee, being a genuine pre-estimate of JDC's loss including recruitment costs, training costs, loss of productivity and project disruption. The parties agree that this amount is not a penalty. This clause does not limit JDC's right to seek injunctive relief or recover additional damages.

