



Lia Nominees Pty Ltd (ACN 008 884 062)
ATFT Lupica Bros Trust (ABN 74 322 177 009)
T/A Lupica Plumbing & Drainage Specialists

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TERMS AND CONDITIONS OF TRADE

1. INTRODUCTION

1.1. Application of Terms and Conditions

These terms and conditions are incorporated into the Contract between Lia Nominees Pty Ltd t/a Lupica Plumbing and Drainage Specialists (**Contractor**) and any person, firm or company (**Customer**) for the provision of Goods and Services by the Contractor, including but not limited to the provision of the Services.

1.2. Definitions and Interpretation

In these Terms and Conditions:

- *"Claim"* shall mean any claim, notice, demand, suit, account, action, proceeding, arbitration, litigation (including reasonable legal costs), investigation or judgment of any nature, absolute or contingent, liquidated or unliquidated, whether known or unknown, whether directly or indirectly, or whether under contract, tort, negligence, statute (including strict liability) or any claim for any liability, damages, losses, costs, expenses, expenditure, charge, compensation, payment, remedy, debt, lien, relief or payment, or relief from any obligation under the Contract.
- *"Contract"* shall mean these Terms, any Quote, the Guarantee and any other document that the parties agree in writing will comprise the Contract in relation to the provision of the Services by the Contractor to or for the Customer, all of which are to be read in conjunction.
- *"Contractor"* shall mean Lia Nominees Pty Ltd (ACN 008 884 062) as trustee for the Lupica Bros Trust (ABN 74 322 177 009) trading as Lupica Plumbing & Drainage Specialists.
- *"Customer"* shall mean any person or company acting on behalf of and with the authority of the Customer. Where the Customer is a corporation or partnership, its directors or partners agree to be bound by this Contract jointly and severally.
- *"Expenses"* means any costs, disbursements, expenses and/or charges incurred by the Contractor in connection with its provision of the Goods and Services.
- *"Goods and Services"* shall mean work undertaken, labour performed, advice or recommendations given and/or goods (including products and materials) and services supplied by the Contractor for the Customer including but not limited to plumbing and drain goods and services.
- *"Guarantee"* shall mean the Deed of Personal Guarantee attached to these Terms.
- *"Price"* shall mean the price or fee payable by the Customer in exchange for the Goods and Services set out in the Quote which is exclusive of GST.
- *"Quote"* shall mean a written statement of the Contractor's estimated price to supply Goods and Services in response to a Customer inquiry provided pursuant to clause 3.
- *"Site"* shall mean the location in the Quote specified for delivery of the Goods and Services (if any).
- *"Terms"* shall mean these Terms and Conditions of Trade.
- *"Working Documents"* shall mean any drawings, specifications, schedules or other documents in connection with the Goods and Services.

2. GENERAL

2.1. Application of Contract

- a) The Contract applies to each occasion on which the Contractor provides Goods and Services to the Customer, subject to any terms and conditions imposed by law which cannot be excluded.
- b) The Customer accepts these Terms and any additional special terms and conditions agreed to in writing by the Contractor and acknowledges that any other agreements or terms and conditions which are inconsistent with the Contract do not form part of the contract between the parties.

2.2. Authority

The Customer warrants that:

- a) unless expressly stated in the Contract, it does not enter into the Contract in its capacity as a trustee of a trust;
- b) where it enters into this Contract in its capacity as trustee of a trust, it has full powers pursuant to its memorandum and articles (if relevant) and its deed of trust (**Trust**) under which it purports to act, the Trust is lawfully and validly constituted and all deeds and other instruments in respect thereof have been properly executed, it has the power, authority and capacity to enter into this Contract and the assets of the Trust as well as the personal assets of the Trustee will, at all times, be available to satisfy the obligations of the Contractor under this Contract;
- c) it has the power, capacity and authority to enter into this Contract and this Contract is fully binding in relation to it; and
- d) it does not breach any laws, approvals, consents or permits in entering into this Contract.

2.3. Working Documents

The Contractor accepts no responsibility whatsoever for the correctness of Working Documents prepared by persons other than the Contractor, its employees or agents and is not liable for any Claim in connection with the same. Should errors occur or any Claim arise as a result of Working Documents provided by third parties, the Customer shall pay the Contractor any damage, loss, cost or expense suffered by the Contractor arising from the error or Claim.

2.4. Provision of Goods and Services

- a) Subject to the Customer's compliance with the Contract, in exchange for payment of the Fees by the Customer, the Contractor will provide the Goods and Services to a reasonable commercial standard at the Site.
- b) The Customer gives its unconditional consent for the Contractor to enter the Site at any time for the purposes of providing or delivering the Goods and Services and where necessary, examining and/or repossessing goods or products forming the Goods and Services in accordance with the Contract. The Customer agrees to do all things necessary to ensure that the Contractor has access to the Site pursuant to this clause.

2.5. Blocked Drain

Where the Goods and Services include any matter connected to unblocking or clearing a drain or pipe:

- a) The Customer acknowledges being advised that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. In addition, the Customer agrees that blocked drains cannot be fixed by simply removing plant/tree root growth or cleaning the drain. Therefore, no warranty is provided by the Contractor in relation to future blockages reoccurring.
- b) The Customer acknowledges that Close Circuit Television (CCTV) is a specialist piece of equipment which may or may not be used at the Contractor's sole discretion in an attempt to identify the source of the blocked drain.
- c) Should any of the Contractor's equipment become lodged in the Customer's faulty drain, it will be removed at the Customer's sole expense or alternatively (in the Contractor's sole discretion) the Customer must pay the Contractor a sum determined by the Contractor in its sole discretion to compensate the Contractor for the loss of equipment and any related loss, costs and expenses, payable after seven (7) days of demand by the Contractor.

2.6. Rock and Filled Ground

Unless specifically included in written quotes and/or estimates, rock excavation, dewatering or supportive work (such as pier and beams for filled or made up ground) will be a variation subject to clause 4.3.

3. QUOTATIONS

3.1. Contractor Supply of a Quote

The Contractor shall give the Customer a Quote (orally or in writing) at the Customer's request. Any information provided in the Quote (such as delivery dates and the Price) is an estimate only and the Contractor is not liable for any Claim related to any change to information provided in the Quote. The Quote may not include some or all of the Expenses.

3.2. Acceptance of a Quote by the Customer

Where the Contractor has given the Customer a Quote, the Customer may accept the Quote by instructing the Contractor (orally or in writing) to provide the Goods and Services outlined in the Quote.

3.3. Effect of Acceptance of a Quote

The Customer's Acceptance of a Quote shall constitute acceptance by the Customer of the Contract including these Terms unless specified otherwise in writing by the Contractor.

3.4. Quote Validity Period

A Quote shall be valid and capable for acceptance by the Customer for ninety (90) days only from the date of the Quote, unless an extension has been authorised by the Contractor.

4. CONTRACT CHARGES

4.1. Contract Prices

Subject to clause 3.1, all Prices charged shall be based on the Goods and Services specified in a Quote.

4.2. Additional Goods and Services

If the Customer requests additional Goods and Services not specified in a Quote, the Contractor shall charge the Customer, and the Customer shall be liable to pay in addition to the Price, additional fees and expenses for the additional Goods and Services as determined by the Contractor in its sole discretion.

4.3. Variations

- a) If the Customer requests changes to Goods and Services specified in a Quote (orally or in writing), the Contractor may in its sole discretion accept or reject the variation. If the request is accepted by the Contractor, the Contractor shall charge the Customer, and the Customer shall be liable to pay a varied Price for any Goods and Services provided and any other fees, costs and expenses as a result of the variation as determined by the Contractor in its sole discretion.
- b) The Contractor may vary the terms of the Contract (including the scope of the Goods and Services) at any time by providing the Customer with reasonable notice if the Contractor considers in its sole discretion that the variation is convenient or necessary in order to provide the Goods and Services or that the variation is necessary as a result of factors or circumstances outside the Contractor's reasonable control.

5. PAYMENT

5.1. Payment

The Customer shall pay the Contractor the Price and Expenses. The Contractor shall from time to time issue an invoice to the Customer setting out the relevant Price and Expenses payable by the Customer for the Goods and Services or portion of the Goods and Services completed at the date of the relevant invoice. When agreed progress payments are not honoured by the Customer, the Contractor shall reserve the right to halt any further work, until such time, as the outstanding payment is forthcoming. In addition, interest (as specified in 5.4) may be charged. GST shall be paid by the Customer on all invoices.

5.2. Time for Payment

The Customer shall pay the Contractor the total amount stated in an invoice as payable, within thirty (30) days from month end or another period specified in the Contract or invoice. Variations within a period subject to a progress payment shall be payable at that time and no later, unless other arrangements are made.

5.3. Failure to Pay

Upon a default in payment of any invoice issued by the Contractor:

- a) all monies due to the Contractor shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand. Interest will accrue daily from the due date under this Contract calculated at a rate of 2% per month.
- b) any expenses, costs or disbursements incurred by the Contractor in recovering any outstanding monies including repossession costs, debt collection agency fees and solicitor's costs shall be paid by the Customer on an indemnity basis plus (without limiting the Contractor's rights under this clause or otherwise) compensation for the Contractor's time at an hourly rate of \$100.00 (plus GST) and *pro rata* for part of an hour.
- c) the Contractor can at any time require security or additional security from the Customer as considered reasonably necessary and can withhold the provision of Goods and Services until all outstanding payments have been made and/or acceptable security has been granted by the Customer.

5.4. Credit Card Transaction Fees

A credit card transaction fee of 1% shall apply to all credit card payments.

6. LIABILITY AND WARRANTY

6.1. Limitation of Liability for Direct Losses

The Contractor's maximum liability to the Customer arising out of or in relation to the Contract is limited to the amount of the Price payable under the Contract at the time liability is determined.

6.2. No Liability for Indirect Losses

The Contractor is not liable to the Customer for or in relation to any:

- a) increased costs or expenses or consequential, indirect or economic loss;
- b) loss of business, contracts, profit, saving or revenue;
- c) Claim resulting from a third-party claim against the Customer, arising out of, or in connection with, the Contract;
- d) Claim connected to any negligent or incorrect use or maintenance of the Goods and Services by the Customer or a third-party;
- e) Claim connected to any alteration, modification or accessorising of the Goods and Services by the Customer or a third-party;
- f) Claim connected to any false, misleading, inaccurate or incomplete information provided by the Customer; or
- g) Claim connected to any the acts or omissions of the Customer or a third-party and/or arising from circumstances outside the Contractor's reasonable control.

6.3. No Liability for Delay

The Contractor is not liable to the Customer for any Claim whatsoever connected to the Contractor's failure to complete, or delay in performing or delivering the Goods and Services. All delivery dates provided are estimates only.

6.4. No Personal Liability

No director or employee of the Contractor is liable to the Customer arising out of or in connection with the Contract. The Contractor holds the benefit of this clause as an agent for and on trust for its director and employees and may enforce this provision on their behalf or permit them to so in their own name.

6.5. Warranty

- a) For goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor is not liable for any Claim, except where stated in the express conditions as detailed and stipulated in the manufacturer's warranty.
- b) The Contractor gives no express or implied warranties and makes no statements or representations in connection with the Contract or the Goods and Services except those expressly set out in the Contract or required by law.

6.6. Indemnity

The Customer indemnifies the Contractor for all Claims in connection with:

- a) a breach of this Contract by the Customer; and/or
- b) any act or omission of the Contractor in connection with the Goods and Services or this Contract.

7. TITLE, SECURITY AND RISK

- a) Risk in relation to Goods and Services passes to the Customer at the point of delivery. Title to any goods or products comprising the Goods and Services does not pass to the Customer until full payment has been made in respect of the Goods and Services. The Contractor retains title to such goods and products and to any proceeds from disposal of the same (to the extent traceable) for as long as there is any amount outstanding in relation to any Goods or Services.
- b) As security for the performance of its payment obligations under this Contract:
 - i) the Customer hereby charges all present and after-acquired personal property as security for compliance with its obligations under the Contract, which includes all proceeds of the sale or divestment of any present or after-acquired goods or products forming the Goods and Services or personal property, and the security interest granted pursuant to this clause extends to all rights in relation to accounts of the Customer's debtors;
 - ii) the Customer hereby charges all present and after-acquired real property as security for compliance with its obligations under the Contract, and the Contractor may lodge a caveat over the Customer's real property pursuant to this clause, the costs of which shall be payable by the Customer.
 - iii) the Customer will do all things and provide all documents as reasonably directed by the Contractor to enable the Contractor to obtain the full benefit of the securities granted under this clause. The Customer consents to the Contractor registering its security interest on the Personal Property Security Register pursuant to the *Personal*

Property Securities Act 2009 (Cth) and releases the Contractor from providing any notice and waives its rights in relation to that notice unless such notice is required by law; and

- iv) where the Customer is a corporation, each of the directors jointly and severally guarantees payment by the Customer of all outstanding amounts in relation to Goods and Services provided and the Customer agrees to procure that its directors promptly sign and return the Guarantee.

8. FORCE MAJEURE

The Contractor shall not be responsible or liable for any Claim occasioned by a cause beyond the Contractor's control, as a result of acts or omissions of the Contractor's sub-contractors, an act of God, equipment or machinery failure/breakdown, explosions, fire, flood, lockouts or other industrial disturbances, non-delivery or shortage of supplies, slowdown, storm, strike, terrorism, war or any form of prohibition from a government authority. The time for delivery or completion of work shall be extended for a reasonable period-of-time having regard to the effect of the cause of delay on the delivery or completion of the Goods and Services.

9. TERMINATION

9.1. Termination

If the Customer:

- a) commits an essential or substantial breach of the Contract;
- b) becomes an insolvent under administration (within the meaning of the *Corporations Act 2001 (Cth)*);
- c) makes a voluntary arrangement with any of its creditors; or
- d) ceases trading for whatever reason,

The Contractor may (without prejudice to its rights under the Contract or otherwise) terminate the Contract in writing with immediate effect and retrieve any goods that have been delivered to the Customer and sell them and apply the proceeds to making good any amounts owing by the Customer to the Contractor under the Contract and return any balance to the Customer.

9.2. Termination for Convenience

- a) If, for any reason, the Contractor wishes to terminate the Contract, it may do so at any time. In this event, the Customer will be charged the Price and all Expenses for all work undertaken at the time of termination and the Contractor has no further obligations to the Customer whatsoever.
- b) The Customer may terminate the Contract upon providing the Contractor with fourteen (14) days written notice, provided that the Customer pays the Contractor the Price and Expenses incurred as at the date of the notice and all loss, damages, costs and expenses incurred by the Contractor arising from the termination.

10. MISCELLANEOUS

10.1. Notices

All Notices under the Contract must be in writing, signed by or for the sender and left, sent by registered post or emailed to the address or email address for the party stated on the Contract or of which the recipient has previously given notice to the Sender. Notices are deemed to be given, if posted, four (4) Business Days after posting or, in any other case, on the next Business Day.

10.2. Entire Agreement

The Contract constitutes the entire agreement between the parties with respect to its subject matter.

10.3. Alterations

These terms and conditions may be altered only in writing and signed by the Contractor and the Customer.

10.4. Cause of Action

Any provision of these terms and conditions which limits or excludes the liability of the Contractor or its Director or employees applies regardless of whether the cause of action under which liability is sought to be imposed is breach of contract, tort (including negligence), liability under a provision implied into the Contract by statute, statutory liability, liability under an indemnity, an equitable claim or any other cause of action without limitation.

10.5. Confidentiality and Intellectual Property

- a) The Customer must keep confidential and not use or disclose the terms of the Contract, any information relating to the Contract or any information relating to the business or ideas or processes communicated by the Contractor to the Customer (except to the extent that to do so is necessarily inherent in enjoying the Goods and Services under

the Contract, or to its employees or advisors if necessary or if required by law) without the Contractor's prior written consent, except where the relevant matter has come into the public domain through no fault of the Customer.

- b) The Contractor retains ownership of all intellectual property in any designs, drawings, sketches and other originations used to provide the Goods and Services and the Customer consents to the ongoing use of all intellectual property provided by the Customer to enable the Contractor to provide the Goods and Services on a royalty-free basis.

10.6. Severability

- a) Any provision of the Contract 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 but if it cannot be read down in that way it is taken to be severed, without affecting the remainder of these terms and conditions.
- b) The Contractor reserves the right to review and make changes to the Terms and Conditions from time to time.

10.7. No Exclusion

The Contract will be governed by, and construed in accordance with, the laws of the State of Western Australia. Each party submits to the exclusive jurisdiction of the Courts of Western Australia.

10.8. Jurisdiction

The Contract does not exclude any provisions required by law to be included and any inconsistent provisions shall be severed from the Contract without affecting the enforceability of the remaining provisions.

10.9. Assignment

The Customer may not transfer or assign its rights or obligations under this Contract to a third party. The Contractor may transfer or assign any of its rights or obligations under this Contract to a third party upon providing reasonable notice to the Customer.

DEED OF PERSONAL GUARANTEE

To: **Lia Nominees Pty Ltd (ACN 008 884 062) as trustee for the Lupica Bros Trust (ABN 74 322 177 009) trading as Lupica Plumbing & Drainage Specialists of c/- P.O. Box 349 Cannington WA 6987 ("Contractor")**

1. IN CONSIDERATION of Guarantor agreeing at the request of the undersigned ("**Guarantor**") to provide Goods and Services to:

CUSTOMER DETAILS	
Name	ABN (if applicable)

Each Guarantor listed below guarantees the due and punctual payment to Guarantor of all amounts that become due and payable to Guarantor by the Customer and each Guarantor agrees to pay Guarantor on demand and to indemnify Guarantor against any and every sum money which the Customer shall at any time become liable to pay to Guarantor and shall fail to pay on the due date.

- 2. Each Guarantor grants to Guarantor a security interest in relation to all present and after-acquired personal property of the Guarantor as security for the Guarantor's obligations under this Deed. Each Guarantor will provide Guarantor with all such information and all such other reasonable assistance as is necessary to assist Guarantor to register the security interest granted by the Guarantor under this clause on the *Personal Property Securities Register* pursuant to the *Personal Property Securities Act 2009* (Cth).
- 3. Each Guarantor grants to Guarantor a security interest in relation to all presently owned and future acquired real property of the Guarantor.
- 4. This Guarantee is a continuing guarantee and Guarantor may grant to the Customer any time or indulgence in relation to the payment of any amounts due and may accept payment in cash or by means of negotiable instruments and may compound with the Customer without affecting the Guarantor's liability under this Guarantee.
- 5. Each Guarantor shall be a primary debtor to Guarantor for the payment of all amounts guaranteed. This Guarantee shall not be determined by the death, bankruptcy, insolvency or liquidation of the Customer or the Guarantor or any one of them.
- 6. The Guarantor will be liable hereunder notwithstanding that any other person or entity intended to be a guarantor in respect of all or any of the said payments shall refuse or fails to sign this or any other guarantee.
- 7. Payment of the amounts guaranteed by a Guarantor hereunder shall be made by a Guarantor immediately upon service of written notice by Guarantor requiring payment.
- 8. Any demand for payment shall be properly served on the Guarantor by Guarantor or by its solicitors by service on the Customer.
- 9. This Guarantee shall be governed by and construed in accordance with the laws of Western Australia.
- 10. In this Guarantee:
 - (a) the masculine shall include the feminine and neuter genders.
 - (b) the singular shall include the plural; and
 - (c) if there is more than one Guarantor, a reference to "Guarantor" shall be deemed to be reference to each Guarantor and the Guarantor's obligations hereunder shall be deemed to be obligations of each Guarantor severally and of the Guarantors jointly.

DATED this _____ day of _____ the year _____

SIGNED AS A DEED BY:

GUARANTOR (1)

Name		Signature

GUARANTOR (2)

Name		Signature