

# EZE Compliance PTY LTD

## Terms and Conditions

### A – General Terms and Conditions

#### 1. About the Website

- 1.1. Welcome to eze.compliance.com.au (the 'Website'). The Website includes information regarding the Services available electrical safety compliance, fire safety compliance, gas safety compliance, and pool safety compliance (the 'Services').
- 1.2. The Website is operated by EZE Compliance PTY LTD (ABN 586 450 751 27). Access to and use of the Website, or any of its associated Products or Services, is provided by EZE Compliance PTY LTD. Please read these terms and conditions (the 'Terms') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- 1.3. EZE Compliance PTY LTD reserves the right to review and change any of the Terms by updating this page at its sole discretion. When EZE Compliance PTY LTD updates the Terms, it will use reasonable endeavours to provide you (and any other client) with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

#### 2. Definitions

- 2.1. "Seller" means EZE Compliance Pty LTD
- 2.2. "Customer" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 2.3. "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

2.4. "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Seller and the Customer.

#### 3. Acceptance of the Terms

- 3.1. You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by EZE Compliance PTY LTD in the user interface.

#### 4. Registration to use the Services

- 4.1. In order to access the Services, you must first register for an account through the Website (the 'Account'), or be in direct communication with EZE Compliance through written forms available through other advertised means.
- 4.2. As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
  - 4.2.1. You warrant that any information you give to EZE Compliance PTY LTD in the course of completing the registration process will always be accurate, correct and up to date.
  - 4.2.2. Once you have completed the registration process, you will be a registered member of the Website ('Member') and agree to be bound by the Terms.

(e) You may not use the Services and may not accept the Terms if:

- (i) you are not of legal age to form a binding contract with EZE Compliance PTY LTD; or
- (ii) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

#### 4. Your obligations as a Member

- (a) As a Member, you agree to comply with the following:
  - (i) you will use the Services only for purposes that are permitted by:
    - (A) the Terms; and

(B) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;

(ii) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;

(iii) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify EZE Compliance PTY LTD of any unauthorised use of your password or email address or any breach of security of which you have become aware;

(iv) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of EZE Compliance PTY LTD providing the Services;

(v) you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of EZE Compliance PTY LTD;

(vi) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;

(vii) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result in termination of the Services. Appropriate legal action will be taken by EZE Compliance PTY LTD for any illegal or unauthorised use of the Website; and

(viii) you acknowledge and agree that any automated use of the Website or its content should be done so with respect to the interests of EZE Compliance, and done in good faith.

## 5. Payment

You agree to abide by these payment terms, including any late fees which may arise from failure to pay EZE Compliance in a reasonable timeframe.

(a) Where the option is given to you, you may make payment for the Services (the 'Services Fee') by way of:

- (i) Electronic funds transfer ('EFT') into our nominated bank account
- (ii) Credit Card Payment ('Credit Card')

(iii) Cheque ('Cheque')

(b) You acknowledge and agree that where a request for the payment of the Services Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Services Fee.

(d) You agree and acknowledge that EZE Compliance PTY LTD can vary the Services Fee at any time. EZE Compliance PTY LTD will endeavour to notify you and/or your clients (if necessary) of any changes in price to subscriptions of service.

(e) Any price advertised by EZE Compliance for the list of services, can be assumed to be in the Australian Dollar Currency.

(f) Late Fees: In some circumstances, EZE Compliance has costs associated with chasing up late and outstanding invoices. This is intended to cover loss EZE Compliance has incurred by not being paid within a reasonable timeframe.

(i) From 60 days of invoice date, EZE Compliance reserves the right to request additional payment of \$5 per week.

(ii) From 120 days of invoice date, EZE Compliance reserves the right to request additional payment of \$20 per week.

These amounts are to be added to original invoice, or invoiced separately as late payment fees.

## 6. Refund Policy

EZE Compliance PTY LTD will only provide you with a refund of the Services Fee in the event they are unable to continue to provide the Services (and have already received payment) or if a Director of EZE Compliance PTY LTD decides, at its absolute discretion, that it is reasonable to do so under the circumstances (the 'Refund').

## 7. Copyright and Intellectual Property

(a) The Website, the Services and all of the related products of EZE Compliance PTY LTD are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website, code, scripts, design elements and interactive

features) or the Services are owned or controlled for these purposes, and are reserved by EZE Compliance PTY LTD or its contributors.

(b) EZE Compliance PTY LTD retains all rights, title and interest in and to the Website and all related Services.

(c) You may not, without the prior written permission of EZE Compliance PTY LTD and the permission of any other relevant rights owners: broadcast, republish, upload to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

## 8. Privacy

(a) EZE Compliance PTY LTD takes your privacy seriously and any information provided through your use of the Website and/or Services are subject to EZE Compliance PTY LTD's Privacy Policy, which is available on the Website or through request.

## 9. General Disclaimer

(a) Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.

(b) Subject to this clause, and to the extent permitted by law:

(i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and  
(ii) EZE Compliance PTY LTD will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

(c) Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of EZE Compliance PTY LTD make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of EZE Compliance PTY LTD) referred to on the Website, includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

(i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;  
(ii) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);  
(iii) costs incurred as a result of you using the Website, the Services or any of the products of EZE Compliance PTY LTD; and  
(iv) the Services or operation in respect to links which are provided for your convenience.

## 10. Limitation of liability

(a) EZE Compliance PTY LTD's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.

(b) You expressly understand and agree that EZE Compliance PTY LTD, its affiliates, employees, agents, contractors, sub-contractors, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

## 11. Termination of Contract

(a) The Terms will continue to apply until terminated by either you or by EZE Compliance PTY LTD as set out below.

(b) If you want to terminate the Terms, you may do so by:

(i) providing EZE Compliance PTY LTD with 10 days' notice of your intention to terminate; and

(ii) closing your accounts for all of the services which you use, where EZE Compliance PTY LTD has made this option available to you.

Your notice should be sent, in writing, to EZE Compliance PTY LTD via the 'Contact Us' link on our homepage or directly through our email address listed there.

(c) EZE Compliance PTY LTD may at any time, terminate the Terms with you if:

(i) you have breached any provision of the Terms or intend to breach any provision;

(ii) EZE Compliance PTY LTD is required to do so by law;

(iii) the provision of the Services to you by EZE Compliance PTY LTD is, in the opinion of EZE Compliance PTY LTD, no longer commercially viable.

(d) Subject to local applicable laws, EZE Compliance PTY LTD reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts EZE Compliance PTY LTD's name or reputation or violates the rights of those of another party.

## 12. Indemnity

(a) You agree to indemnify EZE Compliance PTY LTD, its affiliates, employees, agents, contributors, contractors, sub-contractors, third party content providers and licensors from and against:

(i) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with Your Content;

(ii) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or

(iii) any breach of the Terms.

## 13. Dispute Resolution

(a) Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

(b) Notice:

A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

(c) Resolution:

On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties') must:

(i) Within 30 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;

(ii) If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Dispute Settlement Centre of Victoria or his or her nominee;

(iii) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;

(iv) The mediation will be held in Melbourne, Australia.

(d) Confidentiality:

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

(e) Termination of Mediation:

If 3 months have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

#### 14. Venue and Jurisdiction

(a) The Services offered by EZE Compliance PTY LTD is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

#### 15. Governing Law

(a) The Terms are governed by the laws of Victoria, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Victoria, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

#### 16. Independent Legal Advice

(a) Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

17. Severance(a) If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

Unless otherwise requested in writing by the landlord/recipient to not proceed with said work. EZE Compliance will perform these works in good faith and charge industry-reasonable prices. This is for minor works to non-compliant assessed items, to fix items that fall under the required Compliance Service being undertaken and may or may not be included in the *Australian Standards* checklists.

#### Quotes

Works required with a greater value than that of the pre-approved amount, may be quoted upon for rectification by EZE Compliance. Quotes are subject to rising in prices. Quotes are an estimate on what the final invoice for this rectification work shall be and may fluctuate.

EZE Compliance reserves the right to amend a quote prior to completing works, where both parties have agreed.

#### Job Acceptance

EZE Compliance reserves the right to reject a job. This extends to whether a property is deemed unsafe, abusive, intolerable, or for any other reason.

### A – Safety Checks General

As standard practice, EZE Compliance may suggest/request for the pre-approval of certain works to be in place. EZE Compliance holds the ability to complete works to the value of the pre-approved amount, in order to rectify non-compliant or unsafe items in or around a property. The amount of \$250 for pre-approved works is assumed as standard.

## B – Smoke Alarm Safety Service Scope Of Works

Unless specified otherwise, compliance check prices advertised by EZE Compliance do not include any relocation of hard-wired alarms. Any additional works identified and not covered under this compliance check, may be quoted as and when required.

### **Relocation and Replacement**

Under certain circumstances where smoke alarms have previously been placed unsatisfactorily, EZE Compliance may need to remove and relocate already installed smoke alarms. You allow this to be determined necessary or not by EZE Compliance, and acknowledge that any such removal or relocation may cause new damage to the property in attendance.

EZE Compliance agrees to use its best efforts to ensure that unreasonable damage is not made to the Property. However you acknowledge and agree that depending on matters that are outside of EZE Compliance's control in order to allow EZE Compliance to perform its obligations and the Service, some damage (including but not limited to plaster damage or paint discolouration) may occur.

You agree that you will not hold EZE Compliance liable for any costs associated with the repair of any damage at the Property caused by EZE Compliance resulting from any repair required in accordance with this clause.

### 1. Additional Works

(a) Safety compliance work carried out by EZE Compliance employees/contractors/sub-contractors is subject to the existing compliance and safety of equipment being tested. The quoted prices for work (compliance checks) being completed by EZE Compliance extends to the safety compliance checks only.

This includes, but is not limited to: gas stove tops, gas heaters, smoke alarms being tested. This includes any gas appliances or appliances that are non-compliant.

This pricing does NOT cover the rectification of any non-compliant items or fittings. If additional work is required to meet safety compliance

requirements, this work is NOT covered by EZE Compliance quotes.

(b) Any additional checks required by the Residential Tenancy Act Amendment 2021, requiring increased frequency in work ie new tenant moving in, is NOT covered in our subscription costs.

Subscription costs at any length of term only warrant one (1) piece of works to be completed by EZE Compliance or it's contractors/sub-contractors. Additionally, the management of your compliance requirements is also included in this subscription fee.

## B – Electrical and Gas Safety Services Scope Of Works

### 2. Acceptance

2.1 Where applicable, The Customer accepts that all gas pipework must be compliance tested prior to commencing any work on the gas system.

2.4 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by the Seller in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Customer.

2.5 The Customer warrants that any existing plumbing, gas fitting and/or associated Works in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. The Seller reserves the right to halt all Works if in their opinion the worksite is unsafe and/or the current positioning of a unit is illegal due to not meeting the required clearances then the Customer will be informed of this and may be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Seller will charge a standard fee for the time spent on worksite based on the Seller's quotation.

2.6. Under certain circumstances where existing electrical, plumbing, or gasfitting works have previously been placed unsatisfactorily, unsafely, or in a non-compliant manner, EZE Compliance may need to perform rectification works at the address/property.

You allow this to be determined necessary or not by EZE Compliance, and acknowledge that any such works may cause new damage to the property in attendance.

EZE Compliance agrees to use its best efforts to ensure that unreasonable damage is not made to the Property. However, you acknowledge and agree that depending on matters that are outside of EZE Compliance's control in order to allow EZE Compliance to perform its obligations and the Service, some damage (including but not limited to cosmetic damage) may occur.

You agree that you will not hold EZE Compliance liable for any costs associated with the repair of

any damage at the Property caused by EZE Compliance resulting from any repair deemed necessary in accordance with this clause. Where possible, EZE Compliance will advise you of all necessary rectification works required to meet necessary state or national minimum standards.

### 3. Electronic Transactions (Victoria) Act 2000

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

4.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

### 5. Price and Payment

5.1 At the Seller's sole discretion, the Price shall be either:

(a) as indicated on invoices provided by the Seller to the Customer in respect of Works performed or Materials supplied; or  
(b) the Seller's quoted Price (subject to clause 5.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days.

5.2 The Seller reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or  
(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or  
(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 site accessibility, availability of machinery, safety considerations, presence of foreign material, additional digging required, prerequisite work by any third party not being completed, obscured building defects,

change of design, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.

5.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 At the Seller's sole discretion, a deposit may be required.

5.7 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In The Customer 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.

## 6. Provision of the Works

6.1 Subject to clause below, it is the Seller's responsibility to ensure that the Works start as soon as it is reasonably possible.

6.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Customer to:

- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify the Seller that the site is ready.

6.3 At the Seller's sole discretion, the cost of delivery is in addition to the Price.

6.4 The Seller 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.

6.5 Any time specified by the Seller for delivery of the Works is an estimate only and the Seller will not be liable for any loss or damage incurred by the Customer as a result of delivery being late.

However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

## 7. Risk

7.1 If the Seller retains ownership of the Materials under clause 12 then:

(a) where the Seller is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;

- (i) the Customer or the Customer's nominated carrier takes possession of the Materials at the Seller's address; or
- (ii) the Materials are delivered by the Seller or the Seller's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).

(b) where the Seller is to both supply and install Materials then the Seller 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 Customer.

7.2 Notwithstanding the provisions the previous clause, if the Customer specifically requests the Seller to leave Materials outside the Seller's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer'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 Customer's expense.

7.3 Where the Seller is required to install the Materials the Customer 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 the Seller 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.

7.4 Where the Customer has supplied goods for the Seller to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. The Seller shall not be responsible for any defects in the goods, any loss or damage to the Works (or any part thereof), howsoever arising from the use of goods supplied by the Customer.

7.5 The Customer acknowledges that the Seller is only responsible for parts that are replaced by the Seller and that in the event that other parts/Materials, subsequently fail, the Customer agrees to indemnify the Seller against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

7.6 The Customer acknowledges that Materials supplied may:

- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.

7.7 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where the Seller is requested to merely clear such blockages, the Seller can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, the Seller will immediately advise the Customer of the same and may provide the Customer with an estimate for the full repair of the damaged pipe work.

7.8 In the event that the Customer requests the Seller to use drain/pipe unblocking equipment, and the Seller does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Seller may require the Customer or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.

7.9 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Materials or Works supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.

## 8. Dimensions, Plans and Specifications

8.1 If the giving of an estimate or quotation for the supply of Materials involves the Seller estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Seller's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.

8.4 Should the Customer require any changes to the Seller's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

## 9. Access

9.1 The Customer shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the Works. The Seller 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 the Seller.

9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, earth moving or other equipment

as may be deemed necessary by the Seller, where necessary.

## 11. Compliance with Laws

11.1 The Customer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

11.3 The Customer agrees that the site will comply with any work occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 12. Title

12.1 The Seller and the Customer agree that ownership of the Materials shall not pass until:  
(a) the Customer has paid the Seller all amounts owing to the Seller; and  
(b) the Customer has met all of its other obligations to the Seller.

12.2 Receipt by the Seller of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

12.3 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 12.1:

(a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Seller on request.

## 13. Personal Property Securities Act 2009 ("PPSA")

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2 Upon assenting to these terms and conditions in writing the Customer 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 Customer to the Seller for Works – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.

13.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply

to the security agreement created by these terms and conditions.

13.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

## 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

15.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer 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 Customer must allow the Seller to inspect the Materials or to review the Works provided.

15.2 Notwithstanding anything contained in this document, if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.

## 16. Intellectual Property

16.1 Where the Seller has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.

16.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

16.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry

into any competition, any documents, designs, drawings, plans, works, or products which the Seller has created for the Customer.

## 17. Default and Consequences of Default

17.1 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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).

17.3 Further to any other rights or remedies the Seller may have under this contract, if a Customer has made payment to the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

## 18. Cancellation

18.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Works to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

18.2 The Seller 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 Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Seller for Works already performed. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for

any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

## 19. Dispute Resolution

19.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## 21. Service of Notices

21.1 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.

21.2 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.

## 22. Building and Construction Industry Security of Payment Act 2002

22.1 At the Seller's 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 Payment Act 2002 may apply.

22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

### 23. General

23.1 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.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws Victoria, of the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.

23.3 Subject to clause 15 the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability

shall be limited to damages which under no circumstances shall exceed the Price of the Works).

23.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Seller may elect to subcontract out any part of the Works or Services. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.

23.5 The Customer agrees that the Seller may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Works to the Customer.

23.6 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.

23.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

EZE Compliance enters into all business practices in good faith.