

PROMAC

PLUMBING . ROOFING

SERVICE AGREEMENT

Promac Plumbing & Roofing ABN 89643385228 is a family-owned, licensed Plumbing & Roofing business with over 15 years experience servicing all different types of buildings and facilities from Melbourne to Central Victoria.

Promac Plumbing & Roofing offers a range of plumbing services including:

- drainage, hot and cold water planning, design and installation;
- LPG and natural gas fitting; and
- general plumbing and maintenance.

- Roofing & Cladding Installation

Please read this Service Agreement ("Agreement") carefully. This Service Agreement is a legally binding contract. It outlines the terms and conditions under which you agree to engage our services.

While it is expected you will sign and return this Agreement to us, you are deemed to have accepted this Agreement when you accept our Quote and instruct us to proceed with your plumbing and roofing requirements.

Please contact us if you would like to discuss any aspect of this Agreement.

CONTACT DETAILS

Promac Plumbing & Roofing ABN 89 643 385 228
Phone: 0401266179
Email: contact@promacplumbing.com.au
Postal address: PO Box 90, Woodend VIC 3442

TERMS AND CONDITIONS

1. Meaning of Terms

For the purposes of this Agreement:

- **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the Competition & Consumer Act 2010 (Cth) as amended from time to time.
- **"Call Out"** means calls:
 - after 5 pm and before 7 am, Mondays to Fridays; and
 - that fall on a Saturday, Sunday or Public Holiday.
 - Jobs that are under 1 hour of works
- **"Contractor"** is Promac Plumbing & Roofing ABN 89 643 385 228 its successors and assigns and any person acting on behalf of and with the authority of Promac Plumbing & Roofing and may be referred to as either and interchangeably in this Agreement;
- **You**, ("the **Customer**") are the person or business entity named on the Work Authorisation/Quote provided by the Contractor and may be referred to as either and interchangeably in this Agreement;

- **Goods** mean plumbing and roofing products and associated components as more particularly described on the Contractor's quotes, tax invoices and other paperwork supplied to the Customer;
- **Large Scale Projects** means service to be rendered with a quoted amount (excluding GST) of \$10,000 and above.
- **Site** means the place where the Contractor's work will be carried out; and
- **Small Scale Projects** means service to be rendered with a quoted amount (excluding GST) of up to \$9,999.

2. Quotes

- 2.1 Customised quotes are provided for all services, except for call outs, emergency services or if an hourly rate has been negotiated.
- 2.2 Promac Plumbing will provide you with a quote specifying the work required to be done to fulfil your instructions and an estimate of our charges for the performance of such work.
- 2.3 Promac Plumbing may not commence work on your service requirements until you have accepted the Quote. Acceptance may be either by signing and returning a true copy of the quote or work authorisation form accompanied with a purchase order number (if applicable).
- 2.4 A signed, scanned copy of the Quote will be binding for these terms and conditions.
- 2.5 Quotes are valid for thirty (30) days only, unless Promac Plumbing has authorised an extension.

3. Services

- 3.1 Promac Plumbing provides a range of services to meet the plumbing and roofing requirements of residential and commercial clients.
- 3.2 You agree to the services requested by you and described in your customised Quote.
- 3.3 Our services include but are not limited to:

DRAINAGE SERVICES

- Sewer drainage
- Civil stormwater
- Septic systems
- Blocked drains
- Retention and detention systems
- Pit building

WATER FITTING SERVICES

- Hot and cold water installation
- Hot water system installation
- Solar hot water system installation
- Appliance installation (e.g. dishwashers, water supplied fridges)
- Installation and testing of fixtures
- Installation of water tanks
- Pump installation

GAS FITTING

- Gas pipe installation and repairs
- Natural gas and LPG Connections or Upgrades
- Gas leak repair
- Hot water system installation
- Gas alterations
- Gas fire and heater installation
- Kitchen appliance installation - ovens, cooktops and stoves
- Boiling water taps, dispensers and heaters
- BBQ mains gas installations

ROOFING SERVICES

- Metal roof installation
- Metal roof and wall cladding installation
- Roof replacement
- Roof ventilation
- Re guttering
- Insulation
- Pergola and verandas

- Skylight installation
- Installation of downpipes and guttering
- Roofing maintenance
- Waterproofing and water damage leak repair
- Metal roof and flashing repairs
- Clean, repair, and replacement of gutter systems

MAINTENANCE PLUMBING

- Water leaks and burst pipes located and repaired
- Blocked drains and drainage solutions
- Taps and toilet repairs
- Hot water repairs and service
- High-pressure jet blasting
- Pipe CCTV Inspector and Locater
- Water filters
- Gas installation and inspections
- Insurance inspections and report

4. Fees

4.1 Customised quotes are provided for all services.

After Hours Call out fee

4.2 In case of a Call Out, our fees are calculated as follows:

- \$120 Call out fee then \$120 per hour per tradesman plus materials plus GST.

Supply of Materials

4.3 All materials are supplied at current retail prices from suppliers. Cost of supply of materials is included in your Customised Quote.

Service Fees

4.4 You agree to the payment described in your customised Quote for your selected service or services.

After Hours Service

4.5 Promac Plumbing provides after-hours, and emergency call-out services for all emergency plumbing works required.

4.6 After hours is defined as hours outside Business Hours Monday- Friday. 5 pm - 7 am Weekends and Public Holidays.

4.7 You agree to the following procedure if you request our services after business hours:

- a. You will be invoiced under the After-Hours rate plus call out fee.
- b. The problem and scope of works will be discussed with you.
- c. We will provide our assessment and advice about whether the issue or issues can be isolated and attended to during business hours or whether immediate attention is required.
- d. Where immediate attention is required, you agree that After Hours fees will be applied, and you agree to pay the fees as assessed after the works.

5. PAYMENT

You understand and agree

5.1 You must pay Promac Plumbing the total amount set out in the invoice for the scope of works specified in the customised Quote or work authorisation form within seven (7) days of receiving an invoice

5.2 It is your responsibility to communicate with Promac Plumbing if payment cannot be made by the due date.

5.3 We reserve the right to pursue any payment owing to us through a collection agency in the event you do not communicate with us and agree to pay within a reasonable time.

Emergency Call Outs

5.5 Emergency Call Outs require payment on the completion of works regardless of whether they are Small Scale Projects, Medium Scale Projects or Large Scale Projects.

Payment Methods

5.7 Payment can be made by cash, credit card, debit card, direct deposit and cheque.

5.8 You will be charged a 1.75% surcharge on the total invoice when paying by credit and debit card.

Small Scale Projects

5.10 Payments for Small Scale Projects are made upon completion of works via the payment methods mentioned in clause 5.7.

Deposit

15.5 Promac Plumbing requires a 30% deposit from you for Large Scale Projects.

- 15.6 Deposits can be made via the payment methods mentioned in clause 5.7.
- 15.7 Where Promac Plumbing requests a deposit, you acknowledge that Promac Plumbing is under no obligation whatsoever to commence or undertake any work as requested by you until Promac Plumbing receives the deposit in full and the scope of works and all contract details are finalised.
- 15.8 If the Customer defaults in payment owing to the Contractor, the Contractor shall be entitled to retain the deposit and claim any profit or margin contemplated by or allowed for in this Agreement in addition to any remedy available to the Contractor at law or in equity.

Progress Payments

- 15.9 Large Scale Projects are subject to progress payments.
- 15.10 Progress payment arrangements will be detailed in your customised Quote.
- 15.11 You agree that progress payments are payable:
 - a. on delivery of goods/materials; and
 - b. at the completion of works outlined in the progress schedule.
- 15.12 When you do not honour agreed progress payments, Promac Plumbing reserves the right to suspend any further work until the outstanding payment is paid.
- 15.13 Promac Plumbing reserves the right to charge interest on outstanding amounts.

Building and Construction Industry Security of Payments Act 2002 (VIC)

- 15.14 If there are any disputes or claims for unpaid Goods or services, Promac Plumbing may seek the application of the Building and Construction Industry Security of Payments Act 2002 (VIC) at its sole discretion.

Do and Charge (negotiated hourly rate base including materials and profit margin)

- 15.15 The hourly rate for 'Do, and Charge' work may change should Promac Plumbing hit a major obstacle including but not limited to solid rock, requiring the hire of special equipment and if necessary, an operator to complete the work.
- 15.16 You agree you shall be responsible for all costs and expenses associated with such a hire and a daily hire rate shall apply.

Interest

- 15.17 You may be charged interest at the rate of two per cent (2%) above the commercial lending rate of our bank or financial institution calculated daily on amounts not paid within the time specified in the agreed Quote or work authorisation form.
- 15.18 You agree to Promac Plumbing any costs, expenses or losses incurred by us as a result of your failure to pay to Promac Plumbing all outstanding sums owed by you to Promac Plumbing including but not limited to any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

6. Contractor's indemnity

- 6.1 As the Customer, you shall:
 - a. Ensure you, the Customer, or your representative remains on the job site during the performance of our work where required.
 - b. Sign off that Promac Plumbing has completed the work in accordance with the Quote or work authorisation form; and
 - c. Indemnify Promac Plumbing from any claims or charges relating to damage and/or loss of property from the Site if you have not complied with the conditions specified above.

7. Insurance

- 7.1 Promac Plumbing shall insure against
 - a. Liability under The Workers Compensation Act and at common law in respect of persons employed by the Contractor;
 - b. Liability to third persons in respect of personal injury and property damage; and
 - c. Loss or damages in the workplace and home warranty insurance where required.

8. Variations

- 8.1 You understand and agree that any changes to the contracted work, including a reasonable allowance for the Contractor's overhead and profit, shall be added to the Quote provided by the Contractor.
 - 8.2 Where a direction of the Customer results in a reduction of the work required by the Contractor, the Quote shall be adjusted accordingly however the Contractor shall be entitled to retain a reasonable sum for overhead and profit.
 - 8.3 Variations within a period subject to a progress payment shall be payable at that time and no later.
- Latent Conditions**
You understand and agree
- 8.4 If Promac Plumbing encounters conditions that an inspection could not reasonably have disclosed, then the additional cost of executing the work shall be treated as a variation.

- 8.5 Notwithstanding clause 8.4, the contract price does not include the cost of excavating rock or reef whether man-made or otherwise and the additional cost of excavation and removal of such material shall be deemed a variation.
- 8.6 Any rock, hard ground or reef encountered during installation of below-ground plumbing work will be charged at a rate \$160 plus GST per cubic metre.
- 8.7 Should Promac Plumbing have equipment caught and un-retrievable due to broken or damaged pipes then the additional costs associated with Promac Plumbing retrieving the equipment shall be treated as a variation.

9. Cancellation

- 9.1 You understand and agree that you shall reimburse Promac Plumbing for any costs, expenses or losses incurred by us should you cancel an accepted quote, contract or work authorisation for any reason.
- 9.2 The time for payment for such cancellation shall be five (5) days from the Contractor's invoice.
- 9.3 You are liable for payment of materials ordered, machinery and/or equipment hired on your behalf that Promac Plumbing has been charged for and cannot be returned or hire cancelled without penalty.
- 9.4 Where a penalty for the return of supplies or cancellation of hire applies, you will be liable for payment of any such penalty.
- 9.5 A restocking fee will be charged if materials/machinery/equipment has been ordered.

10. Delay

- 10.1 You agree to indemnify Promac Plumbing from any increased costs, losses or expenses if the Work at the Site is delayed beyond our control.
- 10.2 Suppose you interfere with or prevent the Contractor from carrying out work. In that case, the Contractor may suspend work after giving written notice of an intention to do so.
- 10.3 If the issue continues for a further period of seven (7) calendar days after the giving of the notice, the Contractor may be written notice terminate this Agreement.
- 10.4 In addition to terminating this Agreement, the Contractor may recover damages.

11. Dial Before You Dig

- 11.1 You agree to assist Promac Plumbing to obtain plans of underground pipes and cables on the Site at least 2 (two) clear working days before our proposed work on the Site. These plans can be requested from the DBYD (Dial Before You Dig) website at www.1100.com.au or phone 1100.
- 11.2 You agree should you fail to provide the Promac Plumbing with the appropriate plans for the Site as specified above, you will indemnify Promac Plumbing from any claim for costs, expenses or losses from a third party, being the asset owner.

12. Delivery of goods

- 12.1 Delivery of the Goods shall be made to your (the Customer's) nominated address.
- 12.2 You agree you are responsible for making all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 12.3 Delivery of Goods to a third party nominated by you (the Customer) is deemed to be delivered to you for this Agreement.
- 12.4 The failure of the Promac Plumbing to deliver shall not entitle either party to treat this contract as repudiated.
- 12.5 Promac Plumbing shall not be liable for any loss or damage whatever due to the failure by us to deliver the Goods (or any part of them) promptly or at all.
- 12.6 You agree to indemnify the Promac Plumbing from any costs incurred should Site access not be available, and subsequently, Promac Plumbing is unable to make the delivery.

13. Site access

- 13.1 You must ensure that Promac Plumbing has safe, clear and uninterrupted access to the Site, including removal of all belongings, fragile items, furniture and fittings in the work area until the Work has been completed and Promac Plumbing is paid in full.
- 13.2 You agree to ensure that the site/premises are prepared and available and accessible at the scheduled date and time.
- 13.3 The above applies where additional trades/professionals are working on Site, and the work and access schedule must be arranged to ensure Promac Plumbing has clear, safe and timely access to complete our work.
- 13.4 Any changes to schedule within 24 hours of the commencement of scheduled work may incur additional charges.
- 13.5 You agree to indemnify Promac Plumbing from additional costs or penalties if the completion of the Work is delayed due to interrupted Site access.

14. Risk

- 14.1 The risk in the Goods shall pass to the Customer upon delivery/installation of the Goods to the Customer or a third party nominated by the Customer.

15. Retention of title

- 15.1 Notwithstanding the delivery or installation of the Goods, title in any particular Goods shall remain with the Contractor until the Customer has paid and discharged all monies owing under any invoice issued by the Contractor for the Goods, including all applicable GST and other taxes, levies and duties.
- 15.2 Where the Goods have been on-sold by the Customer, the Customer will be taken to hold the proceeds of the sale of such Goods upon trust for the Contractor and to account to the Contractor for these proceeds.
- 15.3 Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Contractor's title in the Goods nor the Customer's indebtedness to the Contractor and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

Bailment

- 15.4 The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made and until that time:
- a. The Customer must not encumber or otherwise charge the Goods; and
 - b. The Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer

Repossession

- 15.5 The Customer irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them.
- 15.6 The Contractor shall not be liable to the Customer or any person claiming through the Customer.
- 15.7 The Contractor shall be entitled to retain the proceeds of any Goods sold and apply the same towards the Customer's indebtedness to the Contractor.
- 15.8 If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this Agreement, then the Contractor may, without prejudice any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid under this Agreement and commence proceedings to recover the balance of any monies owing to the Contractor by the Customer.

15. Personal Property Securities Act 2009 ("PPSA")

- 17.15 In this clause, the following words have the respective meanings given to them in the PPSA: Financing Statement, Financing Change Statement, Proceeds, Register, Security Agreement, Security Interest and Verification Statement.
- 17.16 The Customer acknowledges and agrees:
- 15.16.1. That these Terms & Conditions constitute a Security Agreement that creates a Security Interest in all Goods (and Proceeds):
 - a. Previously supplied by the Contractor to the Customer;
 - b. To be supplied in the future by the Contractor to the Customer;
 - 15.16.2. That the Security Interest created by this Agreement is a continuing Security Interest in all Goods (supplied now or in the future by the Contractor to the Customer) and Proceeds, which will operate (despite any intervening payment or settlement of account) until the Contractor has signed a release;
 - 15.16.3. To waive its rights in relation to the sections listed in subsection 115(1) of the PPSA (or as otherwise amended), which will not apply (to the extent, if any, mentioned) to the Security Agreement created by these Terms & Conditions
- 17.17 The Customer undertakes to:
- 15.17.1. Keep all Goods free of any charge, lien or Security Interest except as created under this Agreement and not otherwise deal with the Goods in a way that may prejudice any rights of the Contractor under this Agreement or the PPSA;
 - 15.17.2. Sign any further documents and provide any additional information (which must be complete, accurate and up-to-date in all respects) that the Contractor may require to:
 - a. Register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
 - b. Register any other document required to be registered by the PPSA; or
 - c. Correct a defect in a statement referred to in clause 15.3.3(i) below;

- 15.17.3. Indemnify, and upon demand reimburse, the Contractor for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements and expenses in:
 - a. Registering and maintaining a Financing Statement or Financing Change Statement on the Register or
 - b. Releasing any Goods charged thereby; and
 - c. Enforcing or attempting to enforce the Security Interest created by these Terms & Conditions.
- 15.17.4. Not register, or allow to be registered, a Financing Statement or a Financing Change Statement in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of the Contractor; and
- 15.17.5. Immediately advise the Contractor of any material change in its business details (including, but not limited to, its trading name, address, facsimile number) or business practices.

16. Warranty

- 16.1 Any warranty as to the Goods on the part of the Customer shall be limited to the written warranty provided by the manufacturer to the Customer on or before installation of the Goods.
 - 16.2 The Contractor reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.
 - 16.3 The Contractor shall not provide warranty on Goods supplied by the Customer to be used in the Work by the Contractor.
 - 16.4 In respect of all claims, the Contractor shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.
- Plant/tree root blockages**
- 16.5 The Client acknowledges and accepts that the presence of plant/tree root growth and/or blockages are generally indicative of damaged pipes.
 - 16.6 Therefore, no guarantee is provided that blocked drains can be fixed by removing "plant/tree root growth" or cleaning the drain.
 - 16.7 In such cases where there is no replacement of pipes and plumbing infrastructure, no warranty is provided in relation to future blockages reoccurring.

17. Liability

Non-excludable Rights

- 17.1 The parties acknowledge that under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and Conditions. There are rights and remedies conferred on the Customer about the provision of the goods and services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").

Disclaimer of Liability

- 17.2 The Contractor disclaims all conditions and warranties expressed or implied.
- 17.3 All rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights.
- 17.4 To the extent permitted by law, the liability of the Contractor for a breach of a Non-Excludable Right is limited, at the Contractor's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

Indirect Losses

- 17.5 Notwithstanding any other provision of these Terms and Conditions, the Contractor is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:
 - a. any increased costs or expenses;
 - b. any loss of profit, revenue, business, contracts or anticipated savings;
 - c. any loss or expense resulting from a claim by a third party; or
 - d. any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in delivering the Goods or completed the work.

18. Force Majeure

- 18.1 If Promac Plumbing is unable at any time to perform any of its obligations whether wholly or partly because of any cause beyond its control – a Force Majeure event (including without limitation acts of God, inclement weather, strikes, lockouts, bushfires, fires, floods, traffic accidents, riots, pandemics, civil commotion or unrest, acts of government including lockdown, interference by civil or military authorities, terrorist attacks or act of war) Promac Plumbing may give written notice to that effect to you, giving full particulars of such Force Majeure in which case the obligations of

Promac Plumbing under this Agreement shall, to the extent that they are affected by the Force Majeure, be suspended during the term of the Force Majeure.

- 18.2 Promac Plumbing shall not be liable for any loss or damage suffered by you as a result of any delays caused by such Force Majeure events nor will the Contractor be liable for loss or damage suffered by you in the event you cancel or postpone due to a Force Majeure event.

19. Privacy

- 19.1 The Customer authorises the Contractor to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act, to persons and/or legal entities who are a solicitor or any other professional consultant engaged by the Contractor, a debt collector, credit reporting agency and any other individual or organisation which maintains credit references and default listings.
- 19.2 The Contractor may give information about the Customer to a credit reporting agency to obtain consumer and commercial credit reports and lodging consumer and commercial defaults on the Customer's credit file.
- 19.3 This information may be given before, during or after the provision of credit to the Customer and will be in accordance with the Privacy Act 1988.

20. Security & charge

- 20.1 The Customer charges all property both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Contractor under this Agreement or otherwise and authorises the Contractor or its solicitors to execute any consent form as its attorney to register a caveat over any real property owned by the Customer at any time.

21. Dispute resolution

- 21.1 If any dispute or differences concerning this Agreement arises then either party may give the other written notices of the dispute.
- 21.2 Within two (2) weeks after the giving of such notice, the parties shall meet at least once to attempt to resolve the dispute and the person attending must have the authority to agree to a resolution.
- 21.3 Without prejudice to either party's statutory rights under the Building and Construction Industry Security of Payments Act 2002 (VIC), either party may refer any dispute under, or arising out of, this contract to the Domestic Building Dispute Resolution Victoria (DBDRV) or Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Construction Industry Dispute Resolution Scheme, whichever is appropriate.
- 21.4 Each case will first be referred to a Conciliator appointed by the Institute unless each party wishes to proceed directly to arbitration.
- 21.5 If the conciliation is not satisfactorily concluded within six (6) weeks or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

22. General matters

No Waiver

- 22.1 A power or right is not waived solely because the party entitled to exercise that power or right does not do so.
- 22.2 A single exercise of a power or right will not preclude any other or further exercise of that power or right or any other power or right.
- 22.3 A power or right may only be waived in writing, signed by the party to be bound by the waiver.

Severability

- 22.4 Any provision in these Terms and Conditions which is invalid, cannot be read down and is capable of being severed to the extent of the invalidity or unenforceability will not affect the remaining provisions of these Terms and Conditions.

Governing Law and Jurisdiction

- 22.5 These Terms and Conditions are governed by the laws of the State of Victoria, and the parties submit to the exclusive jurisdiction in respect of any proceedings in connection with these Terms and Conditions.

Thank you.

Promac Plumbing and Roofing