

Terms & Conditions of Trade

1. **Preamble**
- 1.1 All Services of the Supplier, whether gratuitous or not, are supplied subject to these Terms and Conditions and:
- (a) The provisions of Part I shall apply to the provision of all Services.
- (b) The provisions of Part II shall only apply to the provision 5.1 of Maintenance or Pump Services or Drainage Services.
- (c) The provisions of Part III shall only apply to the provision of Environmental Services or Drainage Services.
- PART I - GENERAL CLAUSES**
2. **Definitions**
- 2.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document 5.2 or amendments expressed to be supplemental to this Contract.
- 2.2 "Supplier" means, as the context requires: Hanlon Plumbing Limited (337203), Hanlon Maintenance Limited (6258545), Hanlon Pump Services Limited (6259010), Hanlon Environmental Limited (6259013) or Hanlon Drainage Limited 6. (7127402), its successors and assigns or any person acting 6.1 on behalf of and with the authority of the Supplier.
- 2.3 "Customer" means the persons, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner 7. jointly and severally; and
- (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 2.4 "Services" means all Services of Goods supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms "Services" or "Goods" shall be interchangeable for the other).
- 2.5 "Equipment" means all Equipment including any accessories supplied on loan by the Supplier to the Customer (and where 7.2 the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Customer.
- 2.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or record of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 2.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between the Supplier and the Customer in accordance with clause 7 below.
3. **Acceptance**
- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Services.
- 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Services request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.
- 3.6 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods or Services supplied is given in good faith, is based on the Supplier own knowledge and experience and shall be accepted without liability on the part of the Supplier 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 Goods or Services.
- 3.7 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 7.2. In all such cases the Supplier will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order on hold until such time as the Supplier and the Customer agree to such changes.
- 3.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or 7.7 any other applicable provisions of that Act or any Regulations referred to in that Act.
4. **Authorised Representatives**
- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any materials or Services on the Customer's behalf and/or to request any variation to the works on the Customer's behalf (such authority to continue until all requested works have been completed or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly 7.9 authorised representative).
- 4.2 In the event that the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their 7.10 representative.
- 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier profit margin)
- in providing any works, materials, Services or variations/ requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- Errors and Omissions**
- The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any 8. alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the 8.1 Supplier in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or 8.2 electronic) supplied by the Supplier in respect of the Services.
- In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or willful misconduct of the Supplier, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- Change in Control**
- The Customer shall give the Supplier 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 numbers, 8.4 change of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
- Price and Payment**
- At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Supplier to the Customer in respect of Services performed or Goods supplied; or
- (b) the Supplier's Price at the date of delivery of the Services according to the Supplier's current price list; or 8.5
- (c) the Supplier's quoted Price (subject to clause 7.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within seven (7) days.
- The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is 9.1 requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site/building defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos), prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cabing, etc.) which are only discovered on commencement of the Services; or
- (d) if during the course of the Services, the Goods cease to be available from the Supplier third party suppliers, then the Supplier reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
- (e) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of 9.2 variations in foreign currency rates of exchange and/or international freight and insurance charges) which are 9.3 beyond the Supplier control.
- Variances will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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.
- At the Supplier's sole discretion a deposit may be required. 10. Time for payment for the Services being of the essence, the 10.1 Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) on completion of the Services; or
- (b) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed;
- (c) for certain approved Customer's, due twenty (20) days 10.3 following the end of the month in which a statement is sent to the Customer's address or address for notices;
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice sent to the Customer by the Supplier.
- At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18A to 18L of the Construction Contracts Act 2002.
- Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.
- The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 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 Supplier nor to withhold payment of any invoice because that of that invoice is in dispute unless the request for payment by the Supplier is a claim made under the Construction Contracts Act 2002.
- Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Goods. 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 11.1 addition, 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.
- Provision of the Services**
- Subject to clause 8.2 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier'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 Services; or
- (c) notify the Supplier that the site is ready.
- The Supplier may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. The Customer acknowledges and accepts that the next stage of work will not be commenced until the payment of the previous stage has been paid in full.
- Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier 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 Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.
- In the event that the Supplier is required to provide the Services urgently, that may require the Supplier staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Supplier reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Supplier and the Customer.
- Risk**
- If the Supplier retains ownership of the Goods under clause 10 then:
- (a) where the Supplier is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods 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 Goods at the Supplier's address; or
- (ii) the Goods are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- (b) where the Supplier is to both supply and install Goods then the Supplier shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- At the Supplier's sole discretion the cost of delivery is in addition to the Price.
- Notwithstanding the provisions of clause 9.1 if the Customer specifically requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods 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 Goods are insured adequately or 13.2 at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
- Title**
- The Supplier and the Customer agree that ownership of the 13.4 Goods shall not pass until:
- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
- (b) the Customer has met all of its other obligations to the Supplier.
- Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to the Supplier on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries;
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as if so directs;
- (f) unless the Goods have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (g) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier;
- (i) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- Personal Property Securities Act 1999 ("PPSA")**
- Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier; and
- (d) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA. Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 11.1 to 11.5.
- Security and Charge**
- In consideration of the Supplier agreeing to supply the Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.
- Defects and Returns**
- 13.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.
- Goods will not be accepted for return other than in accordance with 13.1 above.
- The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of thirty percent (30%) of the value of the returned Goods plus any freight.
- Non-specified items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- Warranties**
- 14.1 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- Consumer Guarantees Act 1993**
- 14.2 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Supplier to the Customer.
- Intellectual Property**
- 14.3 Where the Supplier has designed, drawn, written plans or a schedule of Services, 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 Supplier, and shall only be used by the Customer at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Supplier has created for the Customer.
- Default and Consequences of Default**
- 14.4 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).

