

# Drain King – Terms & Conditions of Trade

<p>1. <b>Definitions</b></p> <p>1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplementing to this Contract.</p> <p>1.2 "Contractor" means T/A Drain King, its successors and assigns or any person acting on behalf of and with the authority of Drain King 2016 Limited T/A Drain King.</p> <p>1.3 "Customer" means the persons, entities or any person acting on behalf of and with the authority of the Customer requesting the Quotation, order, invoice or other documentation, and:</p> <p>(a) if the Customer is a sole trader, it is a reference to each Customer jointly and severally; and</p> <p>(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Customer's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Goods" means all Goods or Services supplied by the Contractor to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.5 "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 licence details, email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history and any other information.</p> <p>1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client.</p> <p>1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as ordered by the Contractor and the Customer in accordance with clause 5 below.</p>	<p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 At the Contractor's sole discretion the cost of it is either included in the Price.</p> <p>6.3 The Contractor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the terms and conditions of this Contract.</p> <p>6.4 Any time specified by the Contractor for delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage to the Goods as a result of delivery being late.</p> <p>6.5 However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was agreed between the parties. The Contractor will not be liable if unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.</p>	<p>20.3 collateral (account) in favour of a third party without the prior written consent of the Contractor; and</p> <p>(d) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature or proceeds derived from such sales.</p> <p>21.1 The Contractor and the Customer agree that nothing in sections 21.1(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>21.2 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by the Contractor, the Customer shall not be entitled to request a verification statement in accordance with section 148 of the PPSA.</p> <p>21.3 The Customer shall unconditionally ratify any actions taken by the Contractor in the exercise of its powers derived from such sales.</p> <p>21.4 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p>	<p>In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p>	
<p>2. <b>Acceptance</b></p> <p>2.1 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 or accepts delivery of the Goods.</p> <p>2.2 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.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the Customer.</p> <p>2.5 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.</p> <p>2.6 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 any other applicable provisions of that Act or any Regulations referred to in that Act.</p>	<p>7.1 Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiry.</p> <p>7.3 If the Customer requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p> <p>7.4 The Customer accepts that the Contractor will use its best endeavours to identify which sections of drain piping are causing the problem. The Customer agrees to indemnify the Contractor for all costs and consequential loss associated with blockages the occur after the completed Services where:</p> <p>(a) tree root penetration occurs to adjacent to the cleared or repaired section;</p> <p>(b) tree root penetration occurs between rubber couplings and pipe joints, especially when rubber couplings are specified in the scope of the Services;</p> <p>7.5 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 Contractor is requested to merely clear such blockages, the Contractor can offer no guarantee against recurrence or further damage. In the event of collapse during the pipe clearing process the Contractor will not be liable. The Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.</p>	<p>21.22 Contractor in respect of Cookies where transactions for purchases/orders transfer directly from the Contractor's website. The Contractor agrees to display reference to such Cookies and similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to the Contractor when the Contractor sends an email to the Customer, so the Contractor may collect and review that information (collectively, "Personal Information").</p> <p>21.23 In order to enable/disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable/disable the Cookies first by selecting the "disable" provided on the website, prior to ordering Goods via the website.</p> <p>21.24 (a) access, collect, retain and use any information about the Customer;</p> <p>(b) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or other social media), telephone number, or other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Customer;</p> <p>(d) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or other reporting agency for the purposes of providing the Customer a credit reference, debt collection or notifying a default by the Customer;</p> <p>21.25 Where the Customer or an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>21.26 The Customer shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	<p>(a) access, collect, retain and use any information about the Customer;</p> <p>(b) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or other social media), telephone number, or other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Customer;</p> <p>(d) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or other reporting agency for the purposes of providing the Customer a credit reference, debt collection or notifying a default by the Customer;</p> <p>21.26 Where the Customer or an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>21.27 The Customer shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	
<p>3. <b>Errors and Omissions</b></p> <p>3.1 The Contractor acknowledges and accepts that the Contractor shall, without prejudice to the Contractor's liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in electronic data (hard copy and/or electronic) supplied by the Contractor in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.</p>	<p>8. <b>Access</b></p> <p>8.1 The Contractor shall ensure that PRS has clear and free access to the site at all times to enable them to undertake the Works. PRS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and congested or paved or grassed areas) unless due to the negligence of PRS. PRS shall not be held responsible for any damage caused by outside agents. Where the Customer requests PRS to repair such damage, the Contractor will immediately advise the Customer of any costs incurred in rectifying such damage, as per clause 5.2.</p>	<p>21.27 The Contractor shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	<p>(a) access, collect, retain and use any information about the Customer;</p> <p>(b) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or other social media), telephone number, or other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Customer;</p> <p>(d) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or other reporting agency for the purposes of providing the Customer a credit reference, debt collection or notifying a default by the Customer;</p> <p>21.26 Where the Customer or an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>21.27 The Customer shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	
<p>4. <b>Change in Contract</b></p> <p>4.1 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone number/s, change of trustees or business practice). Any such change shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.</p>	<p>9. <b>Compliance with Laws</b></p> <p>9.1 The Contractor and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services. The Contractor shall ensure that the Contractor complies with all relevant safety standards or legislation relating to the Services. The Contractor shall obtain (at the expense of the customer) all permits and approvals for the Services as required for the Services. Notwithstanding clause 11.1 and pursuant to the Health &amp; Safety at Work Act 2015 (the "HSW Act") the Contractor agrees at all times to comply with sections 28 and 29 of the HSW Act. The Contractor shall have obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the site or where they may be acting as a subcontractor for the Customer who has engaged a third party head contractor.</p>	<p>21.28 The Contractor shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	<p>(a) access, collect, retain and use any information about the Customer;</p> <p>(b) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or other social media), telephone number, or other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Customer;</p> <p>(d) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or other reporting agency for the purposes of providing the Customer a credit reference, debt collection or notifying a default by the Customer;</p> <p>21.26 Where the Customer or an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>21.27 The Customer shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	
<p>5. <b>Price and Payment</b></p> <p>5.1 At the Contractor's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Contractor to the Customer; or</p> <p>(b) the Contractor's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 The Customer shall have the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentified conditions (including, but not limited to, adverse sub-surface water conditions, the rapid deterioration or collapse of pipes during the course of the Services, unpredictable weather conditions, the excavation of rock or rock-like substances, as a result of deepening work required due to permanent groundwater, or any interruption to the Services by the Customer or any third party, etc.) which are only discovered upon commencement of the Services;</p> <p>(d) in the event of any change in the Contractor's costs of labour which are beyond the Contractor's control.</p> <p>5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be deemed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.</p> <p>5.4 At the Contractor's sole discretion a non-refundable deposit may be required.</p> <p>5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) on completion of the Services;</p> <p>(c) by way of instalments/progress payments in accordance with the Contractor's payment schedule;</p> <p>(d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(e) the date specified on any invoice or other form as being the date for payment; or</p> <p>(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.</p> <p>5.6 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Customer and the Contractor.</p> <p>5.7 The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment by the Customer, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) and in its own interests.</p> <p>5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums which are claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.9 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Goods. The Customer's 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 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.</p>	<p>10. <b>Underground Locations</b></p> <p>10.1 Prior to PRS commencing the Works the Customer must advise PRS of the precise location of all underground services on the site and clearly mark the same. The underground mains and services must be clearly marked and identified by the Contractor. Electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>10.2 Whilst PRS will take all care to avoid damage to any underground services the Customer agrees to indemnify PRS in respect of all and any liability (claims), loss, damage, costs and fines as a result of damage to any underground services properly located and notified as per clause 10.1.</p>	<p>21.29 The Contractor shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	<p>(a) access, collect, retain and use any information about the Customer;</p> <p>(b) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or other social media), telephone number, or other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Customer;</p> <p>(d) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or other reporting agency for the purposes of providing the Customer a credit reference, debt collection or notifying a default by the Customer;</p> <p>21.26 Where the Customer or an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>21.27 The Customer shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	
<p>6. <b>Delivery of Goods</b></p>	<p>11. <b>Personal Property Securities Act 1999 ("PPSA")</b></p> <p>11.1 Upon assignment of the Goods to the Contractor, the Contractor acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods and/or collateral (including but not limited to, being a monetary obligation of the Customer to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer).</p> <p>11.2 The Customer undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date) in order for the Contractor to be able to register a financing statement or register a financing statement or a Personal Property Securities Register;</p> <p>(b) the Contractor shall not be liable for the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereto;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or</p>	<p>18. <b>Intellectual Property</b></p> <p>18.1 As designed, drawn or developed Goods for the Contractor, then the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written consent of the Contractor.</p> <p>18.2 The Contractor agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any photographs or digital images, documents, designs, drawings or Goods for the Contractor's use.</p>	<p>21.30 The Contractor shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>	<p>(a) access, collect, retain and use any information about the Customer;</p> <p>(b) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or other social media), telephone number, or other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Customer;</p> <p>(d) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or other reporting agency for the purposes of providing the Customer a credit reference, debt collection or notifying a default by the Customer;</p> <p>21.26 Where the Customer or an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>21.27 The Customer shall have the right to request the Contractor for a copy of the information held about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.</p>