

Terms and Conditions of Trade

1. Definitions

Agreement means the entire agreement entered into between You and Us, comprising:

- (a) any Quotation We issue You for the Services, as amended or varied if applicable;
- (b) these Terms and Conditions;
- (c) any contract document entered into between Us and You, in respect of the Services ("**Contract Document**").

Call Out Fee means:

Day	Time	Fee
Monday to Friday	(> 7 am - < 5 pm)	\$49.00
	(> 5 pm - < 8 pm)	\$270
	(> 8 pm - < 7 am)	\$370
Saturday	(> 7 am - < 5 pm)	\$270
	(> 5 pm - < 9 am)	\$370
Sunday / Public Holiday	Anytime	\$370

Claims means any claim, action, proceeding, suit, demand, complaint, prosecution, judgment, award, demand, loss, cost, expense, liability or any legal, administrative, governmental, arbitral or other proceedings or investigation, and to the extent permitted by law, fine or penalty whatsoever, howsoever arising, and whether:-

- (a) known or unknown;
- (b) past, present, future or contingent;
- (c) arising at common law, in equity or under a statute;
- (d) involving a third party or a party to this deed; or
- (e) for interest or costs.

Fee means the remuneration for the Services described in our Quotation.

Quotation means the quotation document preceding these Terms and Conditions of Trade.

Services means the works described in our Quotation.

We/Us/Our means Sewer Surgeon Pty Ltd ACN 607 646 293 / the possessive noun thereof (as the context requires).

You/ Your means the party to whom We provide our Quotation and/or form an Agreement with the possessive noun thereof (as the context requires).

We will provide You the Services pursuant to and in accordance with this Agreement.

2. Scope of Services

As described in our Quotation.

3. Our Quotation

- 3.1 We may revoke, withdraw or vary our Quotation at any time prior to You accepting it in writing.
- 3.2 If You request us to attend Your property to inspect and/or to prepare a quotation, You undertake to pay the applicable Call Out Fee in accordance with clause 7 below.

4. Completion of Services

- 4.1 Subject to clause 4 (b) and (c), We will complete the Services by the completion date stipulated in our Contract Document.
- 4.2 In the event that completion of the Services is delayed for reasons beyond Our control including, but not limited to, inclement weather, You agree to grant us a reasonable extension of time to complete the Services.
- 4.3 For the avoidance of doubt:
 - (a) We will use all reasonable endeavors to complete the Services in a timely manner.
 - (b) The Services will be deemed complete when they are reasonably able to be used for their intended purpose(s).

5. Variations

- 5.1 Any variation to the scope of Services must be in writing and signed by You and Us.
- 5.2 Notwithstanding clause 5(a), You agree for Us to complete at our own discretion any additional works for You that we deem, in our reasonable assessment, to be urgent and necessary.
- 5.3 In addition to the costs provided in our Quotation, You agree to pay Us any additional costs arising from clause 5(b).
- 5.4 In the event You seek to vary this Agreement by reducing the scope of Services, We reserve the right to reduce Our Fee proportionately, making allowance for what would otherwise have been Our profit margin and overheads margin of the Fee.

6. Our Guarantee

- 6.1 We will, within a reasonable time of being notified by You, make good any defects in the Services we have completed.

7. Payment of Our Fee

- 7.1 You agree to pay our tax invoices in full within 3 calendar days of receiving an invoice from Us for the Services.
- 7.2 You agree there will be no set-off or withholding of any part of the Fee and that instead, if you have a Claim against Us you will notify us of that Claim and we will endeavor to resolve that separately to Your payment obligation under this Agreement.

8. Default

- 8.1 If You default in paying the Fee or any portion thereof strictly on time, or if You become bankrupt or commit an act of insolvency or have a liquidator appointed, or if You unreasonably interfere with or delay or prevent Us from completing the Services, then:
- (a) We may cease carrying out the Services for you and may elect to terminate this Agreement. If we decide to do so, You indemnify Us and hold us blameless for any loss or damage You may suffer as a result.
 - (b) Any unpaid portion of the Fee becomes a debt immediately due and payable and provable in bankruptcy and/or liquidation.
 - (c) You agree to pay Our reasonably incurred recovery costs (which may include legal and/or other professional fees and disbursements) on an indemnity basis.
 - (d) You agree to pay Us:
 - i. a monthly administration fee of 2% on all unpaid Fees; and
 - ii. daily interest at a rate of 10% p.a. on any unpaid Fee.
 - (e) In the event you are in default of the Agreement, and to the extent permitted by law, You irrevocably authorise Us to enter onto Your property to repossess any Goods we may have supplied to You or on Your behalf, in connection with Our provision of or anticipated provision of the Services.

9. Indemnity

- 9.1 To the extent permitted by law, You indemnify Us and hold Us harmless from and against all Claims arising from any loss, damage, and liability including to any third party, arising out of or in connection with Your default of this Agreement.

10. Access to Property

- 10.1 You must ensure We have adequate and safe access to the property at which the Services are to be rendered, including for us to inspect the property if required and to complete the Services.

10.2 In the event that there is not proper access to Your property at a time that has been agreed for commencement of the Services, You agree that without prejudice to Our rights under this Agreement, We may postpone this Agreement until access has been granted and if We are unable to reasonably accommodate another time for working on the Services, We reserve the right to terminate this Agreement and You agree to pay Us the amounts referred to below at clauses 11(a) (i) and (ii).

11. Cancellation by You prior to Us commencing the Services

11.1 In the event You advise Us that You wish to cancel this Agreement prior to Us commencing the Services, you agree:

- (a) To reimburse Us for any amount We have incurred in the purchase of or commitment to purchase of any goods or services in connection with the Services;
- (b) To pay the applicable Call Out Fee.

12. No Warranty as to Future Matters

12.1 Where our Services relate to clearing of a blockage or repairing a pipe, We do not warrant that there will be no reoccurrence of the underlying problem.

13. Our Warranties

13.1 Where applicable, We give You warranties in accordance with the *Home Building Act NSW 1989*, as follows:

- (a) that the work will be done with due care and skill and in accordance with the plans and specifications set out in the contract,
- (b) that all materials supplied by the holder or person will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new,
- (c) that the work will be done in accordance with, and will comply with, this or any other law,
- (d) that the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time,
- (e) that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling,
- (f) that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes

known to the holder of the contractor licence or person required to hold a contractor licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment.

14. Your Warranties

14.1 You warrant, in respect of the property at which Our Services are to be rendered:

- (a) You have a right to occupy the property;
- (b) You have and maintain adequate property damage insurance cover.
- (c) All information You provide Us for the purposes of or in connection with Our Quotation is true, correct, reliable.
- (d) You have read and understand and agree to be bound by all the terms of this Agreement.

15. Retention of Title

15.1 Legal and equitable title in any goods supplied by or on behalf of Us to or for or to the benefit of You is retained by Us ("**Goods**") until all Our Fee has been paid.

15.2 Until title in the Goods passes to You, You hold those Goods as bailee and fiduciary agent of Us.

16. General

16.1 No Reliance

- (a) You agree that in entering into this Agreement You have not relied on any prior representation made by Us that is not specifically contained within this Agreement.

16.2 Laws

- (a) The laws of New South Wales apply to this Agreement.

16.3 Notices

- (a) Any notices that We require to give You under this Agreement are to be sent to any residential address or email address You provided Us.

16.4 Severability

- (a) If any clause of this Agreement is or becomes unenforceable, it is to be severed to the extent possible and the remaining clauses remain unaffected.

16.5 Waiver

- (a) No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

16.6 Force Majeure

- (a) Neither We nor You have any liability under or may be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party.
- (b) The party affected by these circumstances must promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 3 months', either party may terminate this Agreement by 28 days' written notice to the other party.