

Act blocked drains TERMS AND CONDITIONS

BETWEEN: ACT Blocked Drains (ABN 28165501084) (ACT Blocked Drains)

AND: The Client

These terms and conditions govern the agreement between Act blocked drains and the Client for the Services provided to the Client as requested.

1. Request for Services or Quote

- 1.1 The Client may request Services by:
- (a) requesting a quote for goods or services, which will be valid for acceptance by the client for 30 days unless specified otherwise in writing; or
 - (b) requesting a service call or urgent work which may not be able to be quoted beforehand.
- 1.2 If the Client requests a service call or urgent work, the Client agrees that
- (a) Act blocked drains will advise the fee for that work as soon as practical, and that fee will be the Quote for the work (whether advised before or after the work is undertaken); and
 - (b) The minimum call out fee of three (3) hours' labour plus travel costs, plus parts applies for any Services provided after hours.
- 1.3 The Client has received, read and understood the Quote and acknowledges that the Quote forms part of the Agreement. Any variation of the quote must be agreed to in writing by both parties and may incur a variation fee at the discretion of Act blocked drains
- 1.4 By signing the Quote, paying a Deposit or emailing Act blocked drains confirming quote acceptance, the Client:
- (a) engages Act blocked drains to carry out the Services specified in the Quote; and
 - (b) agrees to all terms of the Agreement.

2. Provision of the Services

- 2.1 The Quote specifies the Services, which may vary as follows:
- (a) Civil, Gasfitting, Hot water, Roof Plumbing, Sanitary drainage, Stormwater and Water and Sanitary plumbing
- 2.2 Where the Client requires further services ("Additional Services") Act blocked drains may at its discretion agree to provide the Additional Services and will provide an updated Quote. Additional Services may include, but not limited to:
- (a) a change of the goods to be provided as part of the Services, whether by request of the Client or due to availability;
 - (b) a change to the Services originally requested by the Client;
 - (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 defects which require remedial work, health hazards and safety considerations, 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 in walls and ceilings, etc.) which are only discovered on commencement of the Services;
 - (d) if the cost of labour or materials increases for a reason outside of Act blocked drains 's control.
- 2.3 Provision of the Services is at all times subject to the Client:
- (a) obtaining the necessary approval to carry out the Services;
 - (b) providing a safe work place in accordance with 2.4 below; and
 - (c) ensuring:
 - (i) any provided equipment or existing plant complies with any government regulations;
 - (ii) proper control of any and all children, pets and other animals at the premises;

- (iii) adequate gas and electricity supply to the property.
- 2.4 The Client agrees to provide a safe workplace, including:
- (a) providing clear and free access to all work areas and equipment;
 - (b) informing Act blocked drains prior to the commencement of work about any known hazardous materials, risks, health and safety issues onsite; and
- acknowledges that any additional costs to ensure a safe workplace are the responsibility of the Client and are payable in addition to the Fees.
- 2.5 Services will be provided Monday - Friday, 8.00am - 4.30pm unless specified otherwise.
- 2.6 Services will comply with relevant codes, standards and specifications required under applicable law, and the conditions of any relevant development consent, development or construction certificate.
- 2.7 Act blocked drains can advise the Client about applicable standards and regulatory requirements, but will not be liable for any failure to comply with clause 2.6 if the failure relates solely to a design or specification prepared by or on behalf of the Client (but not on behalf of Act blocked drains), or a design or specification required by the owner, if Act blocked drains has advised the Client in writing that the design or specification contravenes clause 2.6.
- 2.8 Prior to Act blocked drains commencing any work:
- (a) the Client must advise Act blocked drains of the precise location of all underground services on the site and clearly mark the same. "Dial Before You Dig" must be consulted where the client is unsure of the locations.
 - (b) the underground mains and services the Client must identify include, but are not limited to, 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.
 - (c) if the client requests Act blocked drains to engage the service locator then this will be an Additional Service.
 - (d) while Act blocked drains will take all care to avoid damage to any underground services the Client agrees to indemnify Act blocked drains in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified under this clause 2.8.
- 2.9 If Act blocked drains :
- (a) requires the Goods, parts, equipment, plant and/tools to be stored at the Client's site, the Client will supply Act blocked drains a safe area for storage and will take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement will be the Client's responsibility.
 - (b) uses drain/pipe unblocking equipment at the request of the Client, and Act blocked drains does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, Act blocked drains may require the Client or their agent to authorise commencement of such works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client will be

responsible for the cost of repair, replacement and/or retrieval of said equipment.

- 2.10 Where the Services include the installation of goods, the location of the Goods is at the Client's discretion, and:
- Act blocked drains takes no responsibility for failure to comply with noise regulations if the Client does not accept Act blocked drains 's recommended location; and
 - in the event that Goods requires relocation, this will be at the Client's expense.

3. Provision of Goods

- 3.1 Where the Services include the provision of Goods, the Client:
- will be responsible for ensuring that materials and goods ordered are suitable for their intended use;
 - accepts responsibility for the Goods following delivery; and
 - releases and indemnifies Act blocked drains from any personal or property damage caused by the Goods that occurs following delivery.
- 3.2 Where the provision of Goods includes attaching new equipment to the Client's existing system, Act blocked drains will not be responsible for any costs associated with repairing or replacing faulty parts of the existing system.
- 3.3 The Client acknowledges and accepts:
- that if goods are ordered that are made to order Act blocked drains offers no refund, either partial or full, in the event of any cancellation of the order by the Client;
 - the supply of goods for accepted orders may be subject to availability;
 - if, for any reason, goods are not or cease to be available, Act blocked drains reserves the right to substitute comparable Goods or parts and vary the Quote. If this occurs, Act blocked drains will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as Act blocked drains and the Client agree to such changes.
- 3.4 The times quoted for delivery of Goods are estimates only and Act blocked drains :
- accepts no liability for failure or delay in delivery of Goods;
 - may deliver Goods by instalments;
 - will not be liable for any cost incurred as a result of unavailability of ordered Goods.
- 3.5 Act blocked drains retains legal and equitable title to any Goods supplied to the Client until full payment is made for all Goods and Services supplied by Act blocked drains pursuant to clause 4 below. The Client gives irrevocable authority to Act blocked drains to enter any premises occupied by the Client, or any other location on which the Goods are situated, at any reasonable time after default by the Client, in order to remove and repossess any Goods, and to sell those Goods if necessary to recover unpaid monies.
- 3.6 The Client agrees that until ownership of the Goods passes to the Client:
- the Client is only a bailee of the Goods and until title passes to the Client, must return the Goods to Act blocked drains on request.
 - the Client holds the benefit of the Client's insurance of the Goods on trust for Act blocked drains and must pay to Act blocked drains the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - the production of these terms and conditions by Act blocked drains will be sufficient evidence of Act blocked drains rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Act blocked drains to make further enquiries.
 - the Client 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 Client sells, disposes or

parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Act blocked drains and must pay or deliver the proceeds to Act blocked drains on demand.

- the Client should not convert or process the Goods or intermix them with other Goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Act blocked drains and must sell, dispose of or return the resulting product to Act blocked drains as it so directs.
- unless the title of the Goods passes to the Client, the Client irrevocably authorises Act blocked drains to enter any premises where Act blocked drains believes the Goods are kept and recover possession of the Goods.
- Act blocked drains may recover possession of any Goods in transit whether or not delivery has occurred.
- the Client will 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 Act blocked drains .
- Act blocked drains may commence proceedings to recover the cost of Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

4. Fees

- 4.1 As consideration for providing the Services, the Client will pay the fees specified in the Quote ("**Fees**") via an accepted payment method identified on the footer of the Quote and/or invoice.
- 4.2 If Act blocked drains determines that further work that was not allowed for in the Quote is necessary, Act blocked drains will immediately notify the Client of any additional fees, which will become part of the Fees.
- 4.3 Where specified:
- the Client will pay a deposit of 50% on acceptance of the Quote ("**Deposit**"). The Deposit is non-refundable. Act blocked drains may, in its discretion, refund the Deposit to the Client on hardship grounds, less any restocking or handling fees;
 - Act blocked drains may issue invoices up to a total of 30% at specified milestones during the contract period;
 - Payment of the balance of the Fees is due on or before completion of the Work;
 - Payment terms for approved account holders will be specified in a separate account agreement.
- 4.4 Where the Services are Counter Sales only, payment is required in full on pick-up or delivery.
- 4.5 The Fees do not include the cost of removing any dangerous waste materials, such as asbestos, that Act blocked drains :
- have not specified as being included in the Agreement
 - could not reasonably identify at the time of entering into the Agreement
- 4.6 If the Client fails to pay any amount of Fees by the applicable due date under clauses 4.3-4.6, the Client agrees that Act blocked drains may
- cease the Services immediately and clause 7 will apply;
 - charge interest at the rate a 1% per month (12% Per Annum), accrued daily;
 - pass on to the Client in full any debt collection charges incurred as a result of non-payment of any account.
- 4.7 Credit card payments will incur applicable charges in accordance with ANZ merchant charges at the time of payment. Act blocked drains may at our discretion, choose to waive this charge if accounts are paid on or before the due date.
- ### 5. Warranty
- 5.1 Installation Services: 12 installation workmanship warranty unless otherwise specified on the Quote. No warranty is given on existing, re-used or customer supplied materials.

- 5.2 Maintenance and Repair Services: 28 day workmanship warranty unless otherwise specified on the Quote.
- 5.3 Products, plant and equipment may be covered by a manufacturer's warranty, and product failure will only be covered under the terms of such a warranty as stated on the manufacturer's brochure. Act blocked drains labour costs for removal and re-installation of these parts or equipment will be at the Client's expense if not covered by the warranty.
- 5.4 Any warranty provided by Act blocked drains may be void should Act blocked drains works be interfered with, damaged, tampered with, modified, or relocated by anyone not employed or authorised by Act blocked drains .
- 5.5 All warranties commence on the date of installation or completion of the Services, and apply only to the work performed by Act blocked drains and/or those components of systems, products or equipment worked on by Act blocked drains .
- 6. Refunds and Returns**
- 6.1 Act blocked drains will not provide a refund or replacement as a result of a change of mind by the Client.
- 6.2 If a warranty pursuant to Clause 5 applies to a faulty product or service Act blocked drains will, at their discretion:
- repair the item; or
 - replace the item;
- depending on the nature of the fault or defect.
- 7. Termination**
- 7.1 Act blocked drains may terminate the Agreement by giving 7 days' notice in writing.
- 7.2 Act blocked drains may terminate the Agreement immediately by giving notice in writing and at any time after the Client:
- breaches any of the terms and conditions of the Agreement which is not remedied within 7 days;
 - commits an act of bankruptcy, voluntary or compulsory liquidation, appointment of a controller or administrator, order or resolution to wind up; or
 - dies.
- 7.3 If the Agreement is terminated in accordance with either clause 7.1 or 7.2 above:
- Act blocked drains must stop providing the Services and take all reasonable steps to minimise loss resulting from that termination;
 - subject to clause 4.3(a) the Deposit will not be refunded to the Client;
 - the Client will be liable for payment for any Services provided up to and including the date of Termination.
- 8. Insurance**
- 8.1 Act blocked drains will effect and maintain workers' compensation insurance and public liability insurance for an amount of not less than \$20000000.
- 9. Limitation of Liability, Indemnity and Release**
- 9.1 To the maximum extent permitted by law, Act blocked drains will not be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, good-will, or other intangible losses ("Consequential Loss").
- 9.2 Insofar as Act blocked drains may be liable, the maximum liability of Act blocked drains , whether in contract, tort, equity, under statute or otherwise for any loss, damage or injury arising directly or indirectly from any breach of Act blocked drains 's obligations under the Agreement is, except where applicable law expressly requires otherwise, limited, at the option of Act blocked drains , to any one or more of the following:
- If the breach relates to Goods:
 - the replacement of the Goods or the supply of equivalent Goods;
 - the repair of such Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired;
 - If the breach relates to Services:
 - the supplying of the Services again; or^{11 SEP}
 - the payment of the cost of having the Services supplied again.
- 9.3 Under no circumstances will Act blocked drains be liable for any claims, damages, obligations, losses, liabilities, costs, debt and expenses (whether consequential or indirect and including but not limited to business interruption, lost profits or lost data) arising from:
- the Client's conduct including but not limited to any violation of any term of the Agreement;
 - the Client's violation of any third party right, including but not limited to any copyright, property, or privacy right;
 - the conduct, action or omission of any Third Party, including without limitation, any defamatory, offensive or illegal conduct of any Third Party; and
 - any action by the Client which voids or decreases Act blocked drains 's benefits under its public liability insurance policy.
- 9.4 The Client agrees to defend, indemnify, release from liability and hold harmless Act blocked drains (including its officers, directors, employees and agents) from and against any and all claims, damages, obligations, losses, liabilities, costs, debt and expenses (including consequential loss) arising from 9.3 above.
- 9.5 The Client acknowledges that:
- Act blocked drains does not at any stage accept any liability in respect of previous works and/or materials supplied by any other third party that subsequently fail and are found to be the source of the failure;
 - where the Client has supplied Goods for Act blocked drains to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those Goods; and
 - Act blocked drains will not be liable for any loss or damage to the Services (or any part thereof) howsoever arising where sub-clauses (a) and (b) apply.
 - the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work. Where Act blocked drains is requested to merely clear such blockages, Act blocked drains can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Act blocked drains will immediately advise the Client of the same and will provide the Client with an estimate for the full repair of the damaged pipe work.
- 10. Entire Agreement**
- The Agreement and Quote contains the entire Agreement and there are no other promises or conditions whether oral or written. The Agreement supersedes any prior agreements and may only be modified in writing by agreement.
- 11. Applicable Law**
- The Agreement will be governed by the laws for the time being in force in NSW or the ACT (whichever is applicable) and the parties agree to submit to the non-exclusive jurisdiction of the courts of NSW or the ACT (whichever is applicable).
- 12. Change in control**
- If the Client is a Company, the Client will give Act blocked drains at least fourteen (14) days prior notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the

Client's name, address, contact phone or fax number/s, or business practice). The Client will be liable for any loss incurred by Act blocked drains as a result of the Client's failure to comply with this clause.

13. Severability

If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

14. Waiver of contractual right

The failure of either party to enforce any provision of the Agreement will not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.