

## TERMS AND CONDITIONS

1. **Application of Terms and Conditions**
  - 1.1 These Terms and Conditions (Terms) apply to any Quote and the subsequent provision of services between Aquashield Bathrooms and the Client for the supply of services by Aquashield Bathrooms to the Client.
  - 1.2 These Terms represent the entire agreement between Aquashield Bathrooms and the Client for the Quote and cannot be varied, waived or amended without express written consent by Aquashield Bathrooms.
2. **Definitions**
  - 2.1 **Aquashield Bathrooms** means Aquashield Bathrooms Pty Ltd ACN 620 084 264.
  - 2.2 **Client** means each and every person named as a Client on the Engagement Quote and where more than one, such multiple parties joint and severally.
  - 2.3 **Completion** means when all items contained in the Scope of Works has been completed in their entirety.
  - 2.4 **Engagement Quote** means the document titled 'Engagement Quote' provided to the Client containing a Quote and Scope of Works.
  - 2.5 **Force Majeure** means an event or circumstance which is beyond the control of the party affected and includes earthquakes, flood, fire or other natural disaster, riot, war, invasion, terrorism, civil war, rebellion.
  - 2.6 **Quote Date** means the date specified on this Quote.
  - 2.7 **Scope of Works** means the Scope of Works document which forms part of this Quote.
    - 2.1 **Services** means any services performed by Aquashield Bathrooms for or on behalf of the Client in accordance with the Terms of this Quote and identified under the Scope of Works or any Variation.
    - 2.8 **Site** means the Address for Services identified in this Quote.
    - 2.9 **Variation** means any change, alteration or addition to the Scope of Works agreed between the Client and Aquashield Bathrooms from time to time.
    - 2.10 **Variation Document** means the document provided to the Client detailing the updated Scope of Works and amended cost estimate.
3. **Quotation and Engagement for Services**
  - 3.1 Upon contact by the Client, Aquashield Bathrooms will provide an offer to undertake the Services by way of an Engagement Quote to the Client containing a Quote, Scope of Works and Terms.
  - 3.2 This Quote will expire thirty (30) days from the Quote Date, unless otherwise agreed in writing.
  - 3.3 The Client will be deemed to have accepted the offer contained in the Engagement Quote upon the Client signing and returning the Engagement Quote.
  - 3.4 In the event there is more than one person named as a client in the Engagement Quote, all persons must sign the Engagement Quote to effect valid acceptance.
  - 3.5 To be clear, works will not be scheduled until the signed Engagement Quote is returned Aquashield Bathrooms.
4. **Withdrawal or Amendments of Quotation**
  - 4.1 Aquashield Bathrooms reserves the rights to withdraw or amend the Quote at any time prior to the acceptance of same by the Client.
5. **Variations**
  - 5.1 Aquashield Bathrooms and the Client agree that any change to the Scope of Works specified in the Engagement Quote will constitute a variation of same.
  - 5.2 In the event the Client requires any variation be made, the Client agrees to sign a Variation Document specifying the updated Scope of Works and the amended cost estimate to be incurred (if any).
  - 5.3 The Variation Document abovementioned must be signed and returned to Aquashield Bathrooms by the Client/s prior to the commencement of the additional works requested.
6. **Instructions**
  - 6.1 If an entity is named as a client in the Engagement Quote, a person must be identified as a Nominated Representative for the entity and that person will be the sole point of contact and provider of all instructions to Aquashield Bathrooms for the Client.
  - 6.2 Where an Engagement Quote is accepted by the agent of the Client, such agent acknowledges they will be jointly and severally liable for the Client's obligations under these Terms and Conditions.
7. **Payment**
  - 7.1 Full and final payment is due to Aquashield Bathrooms upon Completion unless otherwise agreed.
  - 7.2 Payment can be made by cash, EFTPOS, direct deposit, or by any other method as agreed to between the Client and Aquashield Bathrooms. Payments by direct deposit should be made to:

Aquashield Bathrooms  
BSB: 034130  
Account: 211450

Please quote your Invoice number or Quote number so we can track your payment.
8. **Payment Default**
  - 8.1 Notwithstanding any other clause in these Terms, Aquashield Bathrooms reserves the right to suspend any further provision of Services in the event of non-payment or dishonoured payment by the Client pursuant to these Terms.
  - 8.2 Aquashield Bathrooms will not be liable for any loss or damage sustained whatsoever by the Client as a result of suspension of Services for non-payment.
  - 8.3 The Client agrees to pay Aquashield Bathrooms' costs and expenses in enforcing these Terms, including legal fees on an indemnity basis.
- 2.2 Without limitation to Aquashield Bathrooms' other rights or remedies, Aquashield Bathrooms may elect to charge interest, and the Client agrees to pay that interest, on all overdue amounts at the standard contact default interest rate, as published from time to time by the Queensland Law Society.
9. **Cancellation/Rescheduling**
  - 9.1 If the Client wishes to cancel any works to be undertaken, they must notify Aquashield Bathrooms no less than three (3) days prior to when the scheduled date works are to be undertaken.
  - 9.2 Where the Client does not provide sufficient notice of cancellation to Aquashield Bathrooms the Client will be liable for any materials purchased for the provision of the Services together with a flat-rate cancellation fee of \$120 plus GST.
  - 9.3 Where upon attending the Site Aquashield Bathrooms is of the opinion, reasonably held, that the work cannot proceed or continue through no fault of Aquashield Bathrooms (including but not limited to the Client not be in attendance, other trades being relied upon for prior work, access to the required part of the Site is not available) then the Client shall be liable for any materials

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purchased for the provision of the Services together with a flat-rate call out fee of \$120 for that attendance.

### 10. Termination

10.1 Without prejudice to Aquashield Bathrooms' other remedies at law, Aquashield Bathrooms will be entitled to terminate this Service Contract in the event:

- a) That in Aquashield Bathrooms' opinion it will not be able to continue to meet the requirements and expectations of the Client;
- b) The Site presents any dangers or potential dangers which in the opinion of Aquashield Bathrooms may result in injury, damage or loss to Aquashield Bathrooms, its employees, agents or contractors;
- c) The Site presents any circumstances which in the opinion of Aquashield Bathrooms are unsuitable for its employees, agents and contracts including, but limited to, any workplace health and safety concerns or conduct of the Client or a third party which is unprofessional and likely to offend a person;
- d) Aquashield attends the Site on two (2) occasions and the Site is not suitable or available for the Services to be provided;
- e) That in Aquashield Bathrooms' opinion the Client will be unable to meet its payment obligations as and when they fall due;
- f) The Client becomes bankrupt, insolvent, convenes a meeting with its creditors or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- g) The Client fails to approve any Variations that are required to be undertaken in order for Aquashield Bathrooms to provide the Services; or
- h) Aquashield Bathrooms is provided with actual knowledge and evidence that the Client ceases to have authority to allow the Services to be undertaken at the Site.

10.2 It is understood and acknowledged by the Client that Aquashield Bathrooms shall not be liable for any loss or damage sustained whatsoever by the Client, consequential or otherwise, as a result of termination of Services, no matter the circumstances or causes for the termination, whether or not such is due to actions, negligence or otherwise taken by Aquashield Bathrooms and the Client indemnifies Aquashield Bathrooms in relation thereto.

10.3 In the event Aquashield Bathrooms fails to comply with its obligations or provide the Services under this Service Contract, the Client must give a notice to remedy to Aquashield Bathrooms, allowing Aquashield Bathrooms thirty (30) days to fulfil any outstanding Services.

10.4 Should Aquashield Bathrooms fail to comply with a notice issued by the Client under clause 10.3, the Client may terminate this Service Contract, but will be liable for a proportion of Services provided by Aquashield Bathrooms up to the date of termination.

10.5 Despite a termination under this Clause 10 for any reason whatsoever, Aquashield Bathrooms remain entitled to payment for all materials provided and Services delivered to the date of termination based on the lower of the amount quoted or the hourly rate of \$120 for the time spent providing the Services together with any amounts payable by the Client under Clause 9.

### 11. Refund Policy

11.1 Refunds are given at the sole discretion of Aquashield Bathrooms.

11.2 If the Client has a complaint they must put it in writing to Aquashield Bathrooms, who shall, within 14 days of receipt of the complaint, respond in writing outlining their reasons for or against giving a refund or negotiating such other outcome Aquashield Bathrooms may (in its sole discretion) deem appropriate.

### 12. Guarantee and Indemnity from Client

12.1 The Client warrants and guarantees to Aquashield Bathrooms that the Client is authorised to deal with the Site and engage and provide instructions to Aquashield Bathrooms.

12.2 Before the provision of Services, the Client will fully disclose any dangerous or hazardous items known to the Client, whereupon Aquashield Bathrooms may, in its sole discretion, accept or decline to proceed with the Services.

12.3 It is understood and acknowledged by the Client that Aquashield Bathrooms will not be liable for any loss or damage sustained whatsoever to the Site or any claims as a result of provision of the Services and the Client further indemnifies Aquashield Bathrooms from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on an indemnity basis) resulting from the Client's actions, instructions or inaction under this Engagement Quote.

12.4 The Client guarantees that it will provide complete and uninterrupted access to the Site for Aquashield Bathrooms to carry out and provide the Services.

12.5 It is understood and acknowledged by the Client that Aquashield Bathrooms will not be liable for any loss, damage, fine or penalty sustained whatsoever should the Client do any act or thing contrary to the advice given by Aquashield Bathrooms.

### 13. Risk Assessment

13.1 All work will be subject to risk assessment. If the Client knows of any particular risk associated with the Site, then the Client must inform Aquashield Bathrooms accordingly and prior to the commencement of any Services.

13.2 The Client agrees that hazardous or suspected hazardous substances may be discovered at the Site in the course of carrying out the Services by Aquashield Bathrooms which could not have reasonably been anticipated and that the presence of such substances are not the responsibility of Aquashield Bathrooms. The Client agrees that the discovery of any such substances may constitute a Variation to the Scope of Work.

### 14. Standard of Care

14.1 Aquashield Bathrooms represents and warrants that it possesses the training, education, experience, skill, competences, resources and equipment needed to properly perform the Services as set out in the Scope of Works.

### 15. Exclusions of Liability for Delay

15.1 The timeframe for the provision of Services by Aquashield Bathrooms will be determined at the sole discretion of Aquashield Bathrooms and will not be deemed to commence until compliance with clause 12.4 herein.

15.2 Where a timeframe is nominated at any stage, such timeframes are deemed to be an estimate only and Aquashield Bathrooms makes no guarantees as to the timeframe in which Services will be completed.

15.3 It is acknowledged and understood by the Client that Aquashield Bathrooms will not be liable for any loss or damage sustained whatsoever, consequential or otherwise, as a result of delay in the provision or completion of the Services, no matter the circumstances

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- or causes for the delay, whether or not such actions are due to the actions of Aquashield Bathrooms.
- 15.4 Aquashield Bathrooms will not be liable and the Client hereby indemnifies Aquashield Bathrooms against any loss or damages suffered by the Client due to any delay in the provision of Services where the delay is:
- Beyond the power or control of Aquashield Bathrooms;
  - Caused by any of Aquashield Bathrooms' suppliers;
  - Caused by a breakdown in any tools or equipment or Aquashield Bathrooms or its Subcontractors;
  - Contributed to or cause by the Client;
  - A result of electric power supply failure; and/or
  - A result of Force Majeure.
16. **Access**
- 16.1 If the Services to be performed under the Scope of Works are to be performed on the Site that is controlled by the Client, the Client grants Aquashield Bathrooms and any of its subcontractors the right to enter from time to time in order for Aquashield Bathrooms to fulfil the Scope of Works.
- 16.2 If the Scope of Works is to be performed on a Site that is not controlled by the Client, the Client will be responsible for obtaining all necessary licences, permissions and consents to enable Aquashield Bathrooms to access the Site unless otherwise agreed. The Client will also be responsible for ensuring any inductions or training is provided to Aquashield Bathrooms as and when required, at the Client's own cost. Any costs incurred by Aquashield Bathrooms in securing access to the Site will be chargeable to the Client at an hourly rate as provided in the Scope of Works.
17. **Right to Subcontract**
- 17.1 Aquashield Bathrooms, at its sole discretion, may subcontract on any terms the whole or part of the Services.
18. **Risk**
- 18.1 Upon installation by Aquashield Bathrooms, any risk of loss, damage or destruction to the materials, equipment or product (collectively known as the 'Goods') or any part thereof shall pass to the Client.
19. **Warranty for Items Supplied by Client**
- 19.1 The Client understands that Aquashield Bathrooms accepts no liability and provides no warranty for any goods supplied by the Client.
- 19.2 Aquashield Bathrooms will test the supplied goods to determine if they are fit for purpose at the point of installation.
20. **Limitation of Liability and Excepted Risks**
- 20.1 The Client understands that Aquashield Bathrooms does not warrant pre-existing damage or issues present on the Site prior to the commencement of the Services, including but not limited to, any pre-existing structural, plumbing or waterproofing damage or issues.
- 20.2 The Client accepts that were there is no visible damage or issue on the Site, Aquashield Bathrooms will presume no damage or issue is present and Aquashield Bathrooms will accept no liability for any consequent error or damage by Aquashield Bathrooms.
- 20.3 The Client accepts that were there is visible damage or issue on the Site, Aquashield Bathrooms will refer the Client to a certified building works assessor to assess the damage, at the Client's cost, prior to the commencement of the Services.
- 20.4 The Client indemnifies Aquashield Bathrooms against any loss or damages suffered by the Client due to any directions provided by the Client.
- 20.5 The Client acknowledges and accepts that the nature of the works conducted by Aquashield Bathrooms involves physically invasive treatments or works which may result in damage, including but not limited to damaged or scratched tiles and the Client will indemnify Aquashield Bathrooms against any such damage suffered as a result by the Client.
21. **General**
- 21.1 Aquashield Bathrooms may vary or waive any of these Terms at any time at its sole discretion.
- 21.2 The waiver of any breach of a term or condition contained herein does not constitute a waiver of another breach of the same or any other term or condition under these Terms.
- 21.3 The Client acknowledges that the formation of all contracts between Aquashield Bathrooms and the Client is deemed to occur in the State in which the Services are to be provided.
- 21.4 If any part or all of a clause of these Terms is deemed void, illegal or unenforceable, the offending part or clause may be severed from the Terms without affecting the enforceability of the remaining clauses of the Terms.
22. **Privacy**
- 22.1 The *Privacy Act 1988* (Cth) and other privacy legislation applies when we collect, use and disclose information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion (**Personal Information**). You agree that we may manage your Personal Information in accordance with our Privacy Policy available on our website as amended from time to time.
- 22.2 In particular:
- We may collect Personal Information in the course of our engagement by you;
  - We may decide that it is necessary to conduct further searches and enquiries regarding the Personal Information you have provided to us or generally concerning you or your associates for regulatory or credential purposes;
  - You authorise us to use Personal Information in the course of our engagement by you and we may disclose Personal Information to our agents and contractors and to other related organisations where we deem this appropriate or required;
  - You authorise us to use Personal Information for the purposes of quoting, marketing, education, warranty claims and training as we deem appropriate;
  - You authorise us to use the Personal Information and provide this to any related organisation or third party supplier for the purposes of marketing our current and future services and for any other marketing activities we elect to undertake (subject to your ongoing right to request all marketing to you cease at any time upon providing us with written notice of such request); and
  - Where inclusive of Personal Information, you authorise us to use photographs, diagrams and notes created or prepared by us for the purposes of quoting, marketing, education, warranty claims and training as we deem appropriate.
23. **EnduroShield Treatments**

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- 23.1 Aquashield Bathrooms warrants that it is a certified applicator for EnduroShield treatments.
- 23.2 Where the application of the EnduroShield treatment is included in our Scope of Works, Aquashield Bathrooms will conduct an initial visual inspection of the surface area to be treated to confirm initial suitability of the surface for EnduroShield treatment.
- 23.3 The Client acknowledges that all warranty claims are covered by and must be directed to EnduroShield and are not covered by Aquashield Bathrooms.
- 23.4 The Client acknowledges that EnduroShield imposes particular conditions of warranty on the Client, a copy of which will be provided to the Client with a warranty card upon application of the EnduroShield treatment.
- 24. Additional Warranties**
- 24.1 Subject to any limitation of liability contained herein and any express warranty contained in the Engagement Quote to the contrary, Aquashield Bathrooms guarantees that it will repair or replace the following:
- a) Aquashield Ceramic Sealant for a period of ten (10) years from the date of Completion should the said product show signs of leakage within the warranty period aforementioned;
  - b) Re-grouting and silicone works for a period of one (1) year from the date of Completion should the works show sign of leakage within the warranty period aforementioned; and
  - c) Tiling and waterproofing works for a period of seven (7) years from the date of Completion where the works are proven to be defective or faulty.
- 24.2 In order to entitle the Client to claim any warranty provided under clause 24.1, the Client must:
- a) cease use of the goods or affected area immediately upon becoming aware of the fault or defect; and
  - b) notify Aquashield Bathrooms in writing by way of email or post to the addresses provided in the Quote within fourteen (14) of becoming aware of the fault or defect.
- 24.3 The warranties provided under clause 24.1 will not apply if any or all of the following occur:
- a) Any defect or damage is caused to the goods due to:
    - i. The Client's failure to adequately maintain the goods;
    - ii. The Client's failure to follow any prescribed maintenance instructions provided by Aquashield Bathrooms;
    - iii. The Client utilising the goods in a manner inconsistent with the general use of the goods;
    - iv. Fair wear and tear;
    - v. Pre-existing damage or issue on the Site prior to the commencement of the services whether visible or not;
    - vi. Any structural or substrate movement that becomes apparent prior or subsequent to Completion;
    - vii. Any additional works the Client attends to on the Site that may affect the works completed by Aquashield Bathrooms;
    - viii. Cleaning products or personal care products used on or in close proximity to the goods;
  - ix. The Client utilising the goods within a period after Completion that Aquashield Bathrooms advises against,
  - b) The goods have been altered, repaired or otherwise interfered with by the Client or any other individual or entity without the prior written consent of Aquashield Bathrooms.
- 24.4 For the purpose of the warranties contained under this Clause 24, Aquashield Bathrooms specifically advises that the growth of mould, mildew, calcification or bacteria are not considered to be a defect or fault.
- 24.5 Costs associated with the repair or replacement of any goods or services under the warranty claim will be borne by Aquashield Bathrooms unless otherwise agreed in writing.
- 24.6 Where Aquashield Bathrooms re-attends the Site at the direction of the Client in response to a warranty claim and Aquashield Bathrooms determines that it is not a valid warranty claim pursuant to this clause then Aquashield Bathrooms reserves the right to charge the Client at its current hourly rate (currently \$120.00 per hour or part thereof) for all time spent on Site.
- 24.7 The warranties provided herein are in addition to other rights and remedies under the Australian Consumer Law that cannot be excluded by these Terms and Conditions. You are entitled to a replacement or refund for any major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

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