

Terms and Conditions of Trade

1. Recitals

- 1.1 SBMB Maintenance Pty Ltd ACN 659 538 495 trading as Gold Coast Fix It (**Fix It**) is a property maintenance contractor carrying out domestic and commercial trade services in Queensland.
- 1.2 Fix It supplies its Goods and Services to Clients in accordance with these Terms and Conditions of Trade (**Agreement**).

Agreed Terms

2. Definitions

In this Agreement, unless the context otherwise requires:

Term	Definition
Agreement	means these Terms and Conditions of Trade.
Applicable Law	means the laws of Queensland.
Business Day	means Monday to Friday except a gazetted public holiday in Brisbane.
Claim	means any claim, loss, cost, damage or expense.
Client	means any person, or persons, company or business entity to whom Fix It supplied the Goods or Services as named in the Quote.
Due Date	means the date for payment detailed in the Tax Invoice.
Fix It	means SBMB Maintenance Pty Ltd ACN 659 538 495 trading as Gold Coast Fix It.
Force Majeure Event	means any cause beyond a party's reasonable control affecting the performance of its obligations under the Agreement, including, but not limited to, fire, flood, explosion, accident, war, act of terrorism, strike, embargo, governmental requirement, civil or military authority, act of God, inability to secure materials, industrial disputes, pandemic and acts or omissions of other providers of services similar to the Services.
Goods	means all Goods or Services supplied by Fix It to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
GST	means the goods and services tax and other taxes imposed under the GST Law.
GST Law	means the <i>A New Tax System (Goods & Services Tax) Act 1999</i> as amended or replaced from time to time and any associated legislation including without limitation delegated legislation, any expression used that is defined in the GST Law has that defined meaning.
Price	means the amount payable by the Client to Fix It for supply of the Goods and/or Services in the Quote subject to clause 6.1.

Term	Definition
Quote	<p>means:</p> <p>(a) the document titled "Quote" (as amended by a Variation); or</p> <p>(b) any other communication (written or otherwise) provided by Fix It to the Client which details the Goods and/or Services to be provided by Fix It to the Client.</p>
Services	<p>means commercial and residential property maintenance services including but not limited to home maintenance, carpentry works, roofing, fencing, filing and flooring, plastering, locks and screens, repairs, gutter cleaning, outdoor maintenance, decking, cleaning and painting provided by Fix It to the Client, at the request of the Client.</p>
Tax Invoice	<p>means the document titled "Tax Invoice" as issued by Fix It to the Client which details the charges for the Goods and/or Services supplied in accordance with this Agreement.</p>
Total Amount Owing	<p>means an amount to be paid by the Client to Fix It for the provision of Goods or Services and as specified in the Tax Invoice.</p>
Variation	<p>means a variation to the scope of the Services in the Quote as determined by Fix It.</p>

3. Interpretation

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender include the other genders;
- (b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes legal personal representatives, successors and permitted assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments and replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) time is to local time in Queensland;
 - (vii) \$ or "dollars" is a reference to the lawful currency of Australia;

- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (ix) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (x) all parties, clauses or schedules is a reference to the parties, clauses or schedules of or to this Agreement;
- (d) a consent or notice is to be in writing unless otherwise stated;
- (e) in calculating time under this Agreement the term "day" means calendar day. If any period of time expires on a Saturday, Sunday or gazetted holiday for the City of Brisbane, then the period will be taken to expire on the next Business Day. The term "year" means a calendar year of 365 or 366 days as the case may be.

4. Acceptance

- 4.1 The Client is taken to have expressly accepted and is immediately bound, jointly and severally by this Agreement if:
- (a) the Client, its representatives or agents give a written or verbal instruction to Fix It to perform the Services in accordance with the Quote; or
 - (b) the Client accepts delivery of the Goods and/or Services.
- 4.2 The Goods and Services are supplied by Fix It only in accordance with this Agreement to the exclusion of anything to the contrary.
- 4.3 This Agreement may not be amended unless approved in writing by Fix It.
- 4.4 Fix It reserves the right to revise and amend this Agreement from time to time.

5. Quotes

- 5.1 The Client may make an order to Fix It for the provision of Goods and/or Services and Fix It will provide the Client with a Quote.
- 5.2 No Quote accepted by Fix It may be cancelled without Fix It's written consent.
- 5.3 If the Client requests, or Fix It deems there to be a Variation, then Fix It may (but is not obliged to) notify the Client in writing of the Variation, associated delays and any other information Fix It deems relevant.
- 5.4 Fix It is not obliged to commence any Variation requested by the Client unless the Client acknowledges and accepts any variation to the Price in accordance with clause 6.1.
- 5.5 All Quotes remain current for thirty (30) days only from the date of the Quote.

6. Price and Payment

- 6.1 Fix It reserves the right to vary the Price if:
- (a) the Client requests a Variation; or
 - (b) there is a variation in the supply of the Goods or Services or the specifications of the Quote outside the control of the parties including but not limited to, any changes as a result of additional works required due to unforeseen circumstances such as:

- (i) limitations to accessing the site to perform the Services;
- (ii) availability of tools and staff to perform the Services;
- (iii) any alteration to the instructions given by the Client to Fix It during or prior to performance of the Services; and
- (iv) any increase in Fix It's costs of materials and labour.

6.2 Fix It may notify the Client of a variation to the Price in accordance with clause 6.1. The Client must respond to any variation of the Price in writing within five (5) days. If the Client fails to respond, the Client is deemed to have accepted the variation to the Price.

6.3 The Client must make payment of the Tax Invoice within fourteen (14) days of the Due Date at the sole discretion of Fix It.

6.4 If Client fails to pay the Total Amount Owing by the Due Date then interest will be payable by the Client on any outstanding amount from the Due Date at the rate of 5% per annum.

6.5 Fix It may in its sole discretion allocate any payment received from the Client towards any outstanding Tax Invoice that Fix It determines and may do so at the time of receipt or at any time afterwards.

6.6 On any default by the Client, Fix It may re-allocate any payments previously received and allocated.

6.7 Where a Tax Invoice is overdue, Fix It reserves the right to allocate any payments received against any overdue interest and then to the relevant Tax Invoice.

7. **Warranties by Fix It**

7.1 This Agreement does not attempt to exclude, restrict or modify the application of any applicable laws of the Commonwealth, State or Territory which cannot be excluded, restricted or modified.

7.2 Fix It will use due care and skill in supplying the Goods and Services, but does not guarantee that they will be continuous or fault free.

7.3 No employee, officer, director, dealer, distributor, agent or representative of Fix It is authorised to modify the limited warranties set out in this clause.

7.4 Fix It is not liable under this clause to the extent a defect is caused by the Client or any third party, including a failure on the Client's part or the part of a third party at Fix It's discretion.

7.5 The Client warrants that, at all relevant times it is not accepting this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of Fix It whether in answer to an enquiry or otherwise.

8. **Limitation of liability**

8.1 To the extent allowed by law, Fix It is not liable for any Claim related to:

- (a) use of the Goods or Services after Fix It's completion of the Quote at Fix It's discretion;
- (b) any other economic, indirect or consequential loss, or damage to other goods or premises;
- (c) damage caused by or contributed by:
 - (i) the misuse, neglect or wilful destruction of any part of the Goods or Services;
 - (ii) reasonable wear and tear; or

(iii) any other reason as determined by Fix It.

8.2 Notwithstanding any of the above, the Client and Fix It agree that Fix It will, under no circumstances be liable to the Client for any indirect or consequential loss arising out of any act or omission of Fix It or its employees, officers or agents unless such Claim is a direct result of the negligence or breach of this Agreement or a warranty by Fix It.

8.3 The Client and Fix It agree that to the extent permitted by law, any liability for a Claim made against Fix It that cannot be excluded will be limited to the lesser of:

- (a) the re-supply or repair of defective Goods or Services (if applicable);
- (b) the cost of the re-supply or repair by a third party of defective Goods or Services in question (if applicable); or
- (c) the contract price of the original supply of the Goods or Services.

9. **Client Obligations**

9.1 Prior to the request for a Quote, the Client has made its own independent enquiries and satisfied itself as to the size, design, capacity, quality and fitness for purpose of the Goods and/or Services and, to the extent permitted by law, the Client is not relying on any warranty, promise or representation in relation to the Goods and/or Services, either expressly or impliedly given by Fix It.

10. **GST**

10.1 All payments to be made by the Client under this Agreement are calculated without regard to GST which may be imposed upon Fix It. Where any such payment is for a Taxable Supply by Fix It the Client must pay to Fix It concurrently with that payment, an additional amount equal to the amount of GST imposed on the Taxable Supply in question. Fix It must, at the time the payment is made, provide to the Client a Tax Invoice or such other document as may reasonably be required to enable the Client to claim the amount paid as GST as an Input Tax Credit (if applicable).

10.2 Where Fix It has become subject to any penalties or interest as a result of a late payment of GST because of the failure of Fix It to comply with the terms of this clause 10, then the Client must pay to Fix It an additional amount on demand equal to the amount of those penalties and interest.

11. **Termination**

11.1 This Agreement will terminate:

- (a) upon completion of the Services by Fix It in accordance with the provisions of this Agreement;
- (b) immediately:
 - (i) if either party becomes bankrupt or insolvent or, being a company, goes into liquidation or has a receiver or manager appointed on behalf of its debenture holders, creditors or their assigns, or control is taken or assumed by or on behalf of a debenture holder, mortgagee or chargee over property of Fix It which is the subject of the debenture, mortgage or charge, or is placed into statutory management;
 - (ii) if either party commits any act or omission, or being in circumstances which constitute a breach of any obligation required on its part to be performed or observed under this Agreement and failing to remedy such default within 1 month of delivery of a notice from the other party requiring it to remedy the breach and stating that if such breach is not remedied, the other party may terminate this Agreement for default;

(iii) if either party failing to make proper and due performance under this Agreement and failing to remedy such default within 1 month of delivery of a notice from the other party requiring it to remedy the breach and stating that if such breach is not remedied the other party may terminate this Agreement for default;

(c) at any time, by written agreement between the parties; or

(d) by Fix It giving to the Client 1 weeks' written notice of termination of this Agreement.

12. **Costs**

12.1 The Client agrees to pay all of Fix It's costs, charges and expenses incurred due to the Client's default of this Agreement including Fix It's legal costs on the indemnity basis.

13. **Assignment**

13.1 The benefit of this Agreement shall not be dealt with in any way by either party (whether by assignment or otherwise) without the other party's prior written consent.

14. **Force Majeure**

14.1 Notwithstanding any other provisions in this Agreement, neither party will be liable for any delay or failure to perform its obligations under this Agreement (or any part thereof) except for any delay or failure in an obligation to pay any monies payable under this Agreement, to the extent that such delay or failure is attributable to a Force Majeure Event.

14.2 Each party's obligations under this Agreement as affected by a Force Majeure Event will be suspended to the extent of the Force Majeure Event. The parties hereby agree and acknowledge to work together in good faith to minimise the impact of any Force Majeure Event.

15. **Waiver**

15.1 No right under this Agreement shall be deemed to have been waived except by notice in writing signed by each party.

15.2 A waiver by Fix It pursuant to clause 15.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Client.

15.3 Any failure by the Fix It to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Fix It to the Client, will not be construed as a waiver of Fix It's rights under this Agreement.

16. **Governing Law**

16.1 This Agreement is governed by and to be construed in accordance with the laws of the State of Queensland.

16.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and the Courts entitled to hear appeals from those Courts.

17. **Consumer rights**

17.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Australia Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Act 1989* (Qld).

18. Building Industry Fairness (Security of Payment) Act

- 18.1 At Fix It's sole discretion, if there are any disputes or claims for unpaid Goods or Services then the provisions of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) may apply.
- 18.2 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), except to the extent permitted by the Act where applicable.

19. Entire Agreement and Variation

- 19.1 This Agreement constitutes the entire Agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of the Agreement.
- 19.2 No agreements or understanding, varying or extending the Agreement, including in particular the scope of the Services, will be legally binding upon either party unless in writing and signed by both parties.

20. Notices

- 20.1 A communication in connection with this Agreement:
- (a) may be given by an authorised officer of the relevant party or the solicitors for the relevant party;
 - (b) must be in writing;
 - (c) must be left at the address of the addressee in Australia, or sent by prepaid ordinary post to the address of the addressee in Australia or by facsimile to the facsimile number of the addressee in Australia which is specified below, or if the addressee notifies in writing another address or facsimile number in Australia then to that address or facsimile number.
- 20.2 Unless a later time is specified in it, a communication takes effect from the time it is actually received or taken to be received.
- 20.3 A communication delivered by hand or sent by post or facsimile is taken to be received:
- (a) in the case of delivery by hand, on the day of delivery if delivered by 5:00pm on a Business Day, otherwise on the next Business Day;
 - (b) in the case of delivery by post, on the day when, by the ordinary course of post, it would have been delivered;
 - (c) in the case of a facsimile, on the day shown on the transmission report produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause but if the time of transmission is after 5:00pm on a Business Day the facsimile is to be taken to be received on the following day.