

# IOP(SA) PLUMBING WORKS AGREEMENT

## 1. INTERPRETATION

1.1 In this Agreement, unless inconsistent with the context, the words and phrases defined hereunder shall bear the meanings assigned to them in this clause :

1.1.1 **“THE EMPLOYER”** shall mean

1.1.2 **“THE PLUMBING CONTRACTOR”** shall mean

1.1.3 **“THE PLUMBING WORKS”** shall mean

which are to be executed on the site in accordance with the provisions of this Agreement.

1.1.4 **“THE CONTRACT SUM”** shall mean the sum of

or such amounts as shall become payable as set out hereunder at the time and in the manner specified herein and shall be payable to the Plumbing Contractor at his chosen *domicilium citandi et executandi*.

1.1.5 **“THE CONTRACT DOCUMENTS”** shall mean the Institute of Plumbing SA form of contract for all plumbing installation work, including the relevant contract drawings and specifications.

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### 1.1.5.1 The plumbing contract drawings and specifications

#### Contract Drawing Numbers

### 1.1.5.2 The plumbing contract drawings and specifications

It is agreed that the plumbing contract drawings and specifications mentioned in the Agreement and annexed hereto are the final drawings and specifications of the Plumbing Works and form an integral part of this Agreement. Unless the specifications and plans are agreed by the parties in writing and annexed to the Agreement the specifications shall be deemed to be the minimum specifications as set out in the National Building Regulations and the SANS Codes of Practice for plumbing work. In the event of any discrepancy arising between the drawings and specifications, the provisions of the specifications shall prevail.

1.2 The headings in this Agreement are for reference purposes only and shall not be taken into account in construing the content hereof.

1.3 Installation of the Plumbing Works shall conform to the requirements of the compulsory national standards to conserve water as published in the amendment to the Water Services Act in June 2001 which also includes the following SANS Codes of Practice 10254/Geyser installations, 10252/1 Water pipes and fittings and 10252/2 Above and below ground drainage.

## 2. EXECUTION OF THE WORKS

2.1 The Plumbing Contractor shall to the satisfaction of the Employer, execute and complete the Plumbing Works shown upon and described in the contract documents.

2.2 The Plumbing Contractor shall provide everything necessary for the proper execution of the Plumbing Works.

2.3 The Employer shall not have the right to issue instructions to, or interfere with, hinder or obstruct any of the Plumbing Contractor's workmen, any sub-contractors employed on the Plumbing Works or other persons employed by or acting on behalf of the Plumbing Contractor.

2.4 In the event of the materials set out in the Specification hereto being in short supply or unavailable for a reasonable period of time, then the Employer shall select substitute material of a similar quality from amongst like material readily procurable by the Plumbing Contractor. Any difference in price shall be for the account of the Employer subject to the Plumbing Contractor having ordered the material timeously.

**3. PLANS/DRAWINGS**

3.1 The Employer shall furnish the Plumbing Contractor without charge, with as many copies of all drawings and/or specifications and/or blank Bills of Quantities and such additional drawings or instructions as are reasonably necessary for the execution of the Plumbing Works.

3.2 Plans prepared by third parties

Where the plans have been prepared by a third party, the Employer hereby specifically authorises the Plumbing Contractor to submit the plans for and on his behalf for approval to the Local Authority, township owner or other statutory body concerned and hereby instructs him so to submit the said plans within 7 days of the signing hereof. The responsibility for obtaining such approval remains with the Employer who shall be obliged to notify the Plumbing Contractor in writing of all the requirements of the said body, and if submitted by the Plumbing Contractor the cost of obtaining such approval shall be for the account of the Employer.

**OR**

3.3 Plans prepared by the Plumbing Contractor

Notwithstanding anything to the contrary herein or elsewhere contained, the Employer hereby specifically and separately authorises the Plumbing Contractor to prepare working drawings for the Plumbing Works and to submit such plans for and on behalf of the Employer for approval to the Local Authority concerned and to pay the necessary plan sub-mission fees on the Employer's behalf and to apply for and pay all the fees and deposits in connection with the installation of a water supply and other utilities to the property.

3.4 In the event of any suspensive condition contained in this Agreement not being fulfilled, this clause shall be considered to be severable from the rest of this Agreement and in such event the Employer shall be obliged to pay the Plumbing Contractor the sum of R N/A, in respect of the abovementioned services, in which event ownership shall vest in the Employer. Should the contract, however, be proceeded with, then the aforesaid sum shall be deemed to be part of the Contract Sum.

3.5 In the event of the Local Authority, mortgagee, township owner or other statutory body of the Employer, at any time or for any reason whether before, during or after the construction of the Works, requiring any alteration, variation or amendment to the drawings and/or specifications involving the Plumbing Contractor in additional expense, the cost of complying with such alteration, variation or amendment shall be borne and paid for by the Employer.

**4. PAYMENT GUARANTEE/DEPOSIT**

- 4.1 The Employer shall upon request and before commencement of the Plumbing Works, furnish to the Plumbing Contractor with a Banker's Guarantee or other acceptable security for ( ) of the Contract Sum, in terms whereof the Plumbing Contractor shall be entitled to receive progress payments as the Works proceed in accordance with the provisions set out hereunder.

**OR**

- 4.2 The Employer shall pay to the Plumbing Contractor, before commencement of the Plumbing Works, a cash deposit representing ( ) of the Contract Sum, in terms whereof the Plumbing Contractor shall be entitled to receive progress payments as the Works proceed in accordance with the provisions set out hereunder.

**5. RESPONSIBILITY FOR COSTS**

- 5.1 As is specifically indicated hereunder the Employer is responsible for the payment of the costs in respect of the following services should these be required :

- (a) Soil testing
- (b) Blasting and work where a compressor is needed
- (c) Special work due to clay and/or any adverse soil conditions
- (d) Test pits
- (e) Engineer's services
- (f) Cost in respect of locating boundary pegs and municipal services

- 5.2 The undermentioned charges are, as indicated below, for the account of the Employer unless otherwise specifically agreed to in writing :

- 1. Sewerage connection fees
- 2. Water connection fees
- 3. Removal of builders' rubble
- 4. Importing compactable material
- 5. Any electrical work
- 6. Water consumption
- 7. Electrical consumption
- 8. Scaffolding

- 5.3 The Employer will supply water and electricity to enable the Plumbing Contractor to perform his obligations in terms of this Agreement.

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- 5.4 The Employer will provide toilet facilities for the use of the employees of the Plumbing Contractor. Where no such facilities are provided, the Plumbing Contractor will arrange for the use of temporary facilities. The Employer will be responsible for the cost hereof.
- 5.5.1 Should any underground services such as sewers, cables, water pipes and drains be encountered in the course of, or in connection with the Plumbing Works, the onus of diverting or removing the same and the risk and costs in such diversion or removal shall be for the account of the Employer.
- 5.5.2 It will be the responsibility of the Employer to point out to the Plumbing Contractor the precise location of any such underground services to prevent damage thereto. Where damage occurs to underground services not pointed out by the Employer as envisaged in 5.5.1 above, the Employer will bear the loss and liability resulting therefrom.
- 5.6 The Plumbing Contractor will use his best endeavours not to damage plants or trees during the execution of the Plumbing Works. The Plumbing Contractor will however not be liable for any such damage that might occur, nor will the Plumbing Contractor be liable for the reinstatement of the garden unless otherwise agreed with the employer.

**6. COMMENCEMENT AND COMPLETION**

- 6.1 Possession of the property shall be given to the Plumbing Contractor on \_\_\_\_\_ who shall thereupon within a reasonable time commence with the Plumbing Works and regularly proceed with and complete the same within \_\_\_\_\_ Days following the date given above, subject to anything to the contrary herein contained and subject furthermore to any extension of time granted by the Employer in terms of clause 8. In the event of the Plumbing Works coinciding with the December holiday period in any year, then the intended period of completion within the time limit as aforesaid shall be extended by an additional 30 days, or for such period as the Plumbing Works encroach on the December holiday period.
- 6.1.1 the necessary plans and other approvals, consent or other authorisation required under any law (including any statute, ordinance, by-law and/or regulation) have been obtained by the Employer;
- 6.1.2 the boundary pegs and municipal services of the property are located and pointed out to the Plumbing Contractor;
- 6.1.3. the mortgage bond, where applicable, has been granted and registered;
- 6.1.4 all servitudes, if any, have been registered and pointed out to the plumbing contractor;
- 6.1.5 the bank guarantee for payments has been furnished or the deposit has been paid to the plumbing contractor.

6.2 Should any of the conditions as stated above not be fulfilled for a period of one hundred and twenty (120) days from the date of signing of this Agreement, either party shall have the right to cancel this Agreement and the Plumbing Contractor shall be entitled to recover all reasonable and actual costs incurred arising out of this Agreement up to the date of cancellation, from the Employer.

6.3 If the Plumbing Contractor fails to complete the Plumbing Works within the period stipulated in the preceding sub-clause or any extended period authorised in terms of Clause 8 in writing by the Employer, then the Plumbing Contractor shall pay the Employer as liquidated and ascertained damages the sum of \_\_\_\_\_ per calendar week or part thereof for the period during which the said Plumbing Works shall so remain incomplete and the Employer may deduct such damages from any monies due to the Plumbing Contractor.

## 7. VARIATIONS

The Employer may from time to time order variations as to the alteration or modification of the design, quality or quantity of the Plumbing Works as shown upon or described in the drawings provided that no such variation shall change the essential character of the Plumbing Works and no such variation shall vitiate this agreement, provided further that any order for variations in terms of this clause shall be in writing.

The value of any variation shall be assessed between the Plumbing Contractor and the Employer and such agreed value shall be paid to the Plumbing Contractor together with the next payment due to him in terms of this Agreement.

## 8. EXTENSION OF TIME

8.1 If completion of the Plumbing Works is delayed as a result of *vis major* or unforeseen circumstances including but without being limited to any strike, lock-out, shortage of labour and materials, riot, political or civil disturbances, inclement weather or any other causes beyond the Plumbing Contractor's control :

8.1.1 the Employer shall not for such reason have any claim against the Plumbing Contractor whether for damages or otherwise;

8.1.2 the Plumbing Contractor shall be entitled to a fair and reasonable extension of time for the completion of the Plumbing Works should he be delayed by the employer for any reason at any time during the contract period.

## 9. LIABILITY AND INSURANCE

9.1 The Plumbing Contractor shall and hereby does indemnify the Employer against any liability, loss, claim or proceedings whatsoever whether arising under common law or by statute consequent upon personal injuries to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Plumbing Works unless due to any act or omission of the Employer or his servants or agents.

- 9.2 The Plumbing Contractor shall and hereby does indemnify the Employer against any liability loss, claim or proceedings consequent on loss of or damage to any movable or immovable property arising out of or in the course of or caused by the execution of the Plumbing Works and due to any act or omission of the Plumbing Contractor, his agents, servants of sub-contractors. The term "property" for the purpose of this sub-clause shall exclude the Plumbing Works. This indemnity shall not apply if the loss contemplated herein is due to any act or omission of the Employer or his servants or agents.
- 9.3 The Plumbing Contractor shall insure against public liability in order to give effect to the indemnities as referred to in sub-paragraphs 9.1 and 9.2 hereof.
- 9.4 The Plumbing Works shall be at the risk of the Plumbing Contractor who hereby indemnifies the Employer against any liability, loss, claim or proceedings whatsoever arising out of damage caused thereto and undertakes to insure against such loss as is more fully set out in Clause 9.5 below.
- 9.5 The Plumbing Contractor shall in the joint names of the Employer and the Plumbing Contractor insure the Plumbing Works against all such risks normally included in a "Contractor's All Risk Policy". The sum insured shall be the Contract Sum plus 10% thereof to cover any increased costs arising from variations to this Agreement. Where this Agreement is for alterations and/or additions to existing premises such insurance shall be taken out by the Employer and the indemnity contained in Clause 9.4 above shall in such circumstances be null and void and of no force or effect.
- 9.6 Notwithstanding the provisions of Clauses 9.1 and 9.2 hereof, the Plumbing Contractor does not indemnify the Employer where the liability, loss, claim or proceedings originates from any of the excluded circumstances listed hereunder, and the Employer shall and hereby does indemnify the Plumbing Contractor in such circumstances :
- 9.6.1 any act or omission of the Employer his servants or agents and those for whose acts or omissions they are responsible;
- 9.6.2 design by the Employer or any agent of the Employer;
- 9.6.3 the use or occupation of land by the Plumbing Works.
- 9.6.4 the right of the Employer to execute the Plumbing Works or any parts thereof on, over, under, in or through any land;
- 9.6.5 interference with any servitude or other right which is the unavoidable result of the execution of the Plumbing Works which shall include the weakening of or interference with the support of land unless resulting from any negligent act or omission on the part of the Plumbing Contractor, his sub-contractors, or others for whose acts or omissions the Plumbing Contractor and his sub-contractors are responsible;
- 9.6.6. physical loss or damage to an existing structure in respect of which this agreement is for an alteration or addition thereto where such loss or damage is caused by fire, explosion, earthquake, malicious damage and special perils as insurable by a member of the South African Insurance Association.

- 9.6.7 physical loss or damage to the contents of an existing structure in respect of which this agreement is for an alteration or addition thereto and/or the contents of the Plumbing Works where completion has been achieved.

**10. RISK OF DESIGN AND UNINSURED RISKS**

- 10.1 Risks, including the risk of design for the Plumbing Works by the Employer or his servants or agents or the suitability of provisional cost items are not covered by the above insurance policy and shall be at the risk of the Employer.
- 10.2 Where removal of lateral support of an adjoining property is involved, or where support of structures being altered or added to is involved, the Employer shall effect insurance in the names of the Employer and Plumbing Contractor and Sub-Contractors against any risk to persons or property.

**11. PAYMENT**

- 11.1 the Plumbing Contractor shall invoice the Employer for work amounts demanded by above invoices will be payable within of the invoice. Payment of the days from the issue

- 11.2 Cession

In the event of the Contract sum being payable from the proceeds of a building loan secured by a First Mortgage Bond obtained from a Building Society or approved Financial Institution, then the Employer irrevocably cedes to the Plumbing Contractor a sum equal to the amount of such mortgage bond. The Plumbing Contractor is hereby authorised to receive interim draws from the Mortgage/s and the Employer agrees to sign the authority for such payments as and when required by the Plumbing Contractor. In the event of the Employer failing or refusing to authorise payment of such interim draws, the Plumbing Contractor shall be entitled without prejudice to any other rights which it may have in terms of this Agreement, or in Law, to discontinue the said Plumbing Works forthwith, and all damages arising, costs incurred and additional interest accruing shall be for the account of the Employer provided the Plumbing Contractor himself is not in default in any way. In addition, the Employer hereby irrevocably authorises the Plumbing Contractor to sign any release for and on behalf of the Employer and to accept all draws on the Employer's behalf. In the event of the Mortgagee/s, through error or otherwise, paying to the Employer or his agents, or assigns, any of the proceeds to the Bond/s hereby ceded, prior to the Plumbing Contractor having been paid the full Contract sum, plus any additional sums herein contained, the Plumbing Contractor may require the Employer forthwith to pay such amounts to the Plumbing Contractor plus interest from time to time thereon at a rate of interest equivalent to the minimum lending rate charged by the Plumbing Contractor's bank in respect of unsecured overdraft facilities as charged from time to time from the date of such payment to the Employer until the date of payment thereof to the Plumbing Contractor.



- 11.3 Any instalment not paid on the due date shall bear interest thereon at a rate of 2% greater than the minimum lending rate charged by the Plumbing Contractor's bank to its clients, which interest shall accrue as from the due date for payment.
- 11.4 The Plumbing Contractor shall notify the Employer in writing seven (7) days before the completion of each section of the date of such completion, failing which the Employer shall not be liable for interest on late payment as provided for in clause 11.3 above.
- 11.5 Notwithstanding anything to the contrary herein contained, the Employer shall be entitled to withhold a retention amount not exceeding 10% of each invoice, but not exceeding 5% of the Contract Sum for a period of three months after completion or until such time as the Plumbing Contractor has rectified all material faults or defects in terms of Clause 12 hereof, whichever period is the longer.

**12. DEFECTS LIABILITY**

- 12.1 For the purpose of this agreement, except where expressly stated otherwise, the date of Completion shall be the due date for final payment by the Employer to the Plumbing Contractor.
- 12.2 Upon Completion of the Plumbing Works the Employer shall take possession of and inspect the Works and provide the Plumbing Contractor with a final written list within 14 days of any work still to be completed and/or defects to be remedied. The defects liability period shall commence from the date of Completion.
- 12.3 As soon as the work shown on the above list has been completed by the Plumbing Contractor and accepted by the Employer, the Plumbing Works shall be deemed to be complete.
- 12.4 Any leaks, shrinkage or other defects which may manifest itself within three months after Completion of the Plumbing Works due to materials or workmanship not in accordance with this Agreement, or to faults occurring before completion of the Plumbing Works, shall within a reasonable time after receipt of the Employer's written instructions be made good by the Plumbing Contractor and, unless otherwise mutually agreed upon, at his own cost any damage by frost which may appear after completion, unless it is agreed that such damage occurred before completion.
- 12.5 The Plumbing Contractor shall, however, not be liable under any circumstances whatever for any faults or defects or consequential damage resulting from surface or storm water, ground containing clay, geological disturbances and adverse sub-soil conditions.
- 12.6 The Plumbing Contractor shall be responsible in terms of the preceding paragraph only for damage sustained by the Employer under conditions of normal use and service and shall under no circumstances be responsible for damage or loss caused by wear and tear, misuse, neglect, negligence, abuse or accident or in respect of or arising from any risk normally insurable in terms of home owners' insurance policies, issued by South

African insurance companies in respect of residential properties;  
or  
Any risk normally insurable in terms of insurance policies issued by South African Insurance companies in respect of commercial or industrial properties;

*(delete which is not applicable)*

and the Plumbing Contractor shall under no circumstances in either case be liable for any consequential loss or damage.

- 12.7 Where the supplier of any materials used in terms of this Agreement issues a warranty on the material, such warranty will be ceded by the Plumbing Contractor to the Employer. The Employer hereby indemnifies the Plumbing Contractor in respect of any liability for defects in any such material.
- 12.8 Where the supplier of material used in terms of this Agreement issues no warranty on such material, or where material is supplied by the Employer, the Plumbing Contractor will not be liable for any defects arising from such materials. The Employer hereby indemnifies the Plumbing Contractor in respect of any liability for defects in any such material.
- 12.9 The Plumbing Contractor hereby warrants the quality of workmanship performed by him in terms of this Agreement for a period of 3 (three) months from the date of Completion of the Plumbing Works.
- 12.10 The Employer shall be liable to pay a fee of \_\_\_\_\_ per hour to the Plumbing Contractor for any call out to attend to a defect in terms of clause 12. Should the defect fall within the warranty given by the Plumbing Contractor, the Plumbing Contractor will refund such fee to the Employer within 7 (Seven) days after he attended the Plumbing Works.
- 12.11 Where a defect arises in any material, the Plumbing Contractor will not be responsible for the cost of labour to rectify such defect, provided that should the defect also have arisen from defective workmanship, the provisions of clause 12.9 will apply.

### **13. PROOF OF OWNERSHIP**

- 13.1 The Employer warrants that he is the registered owner and/or that he has purchased the property and shall not conclude any agreement of sale as such for the duration of this Agreement unless the prior written consent of the Plumbing Contractor is obtained, which consent shall not be unreasonably withheld. In the event of the property not being registered in the name of the Employer within a period of one hundred and twenty (120) days, calculated from the date of signing this Agreement, then the Plumbing Contractor shall have the right to cancel this Agreement and, without prejudice to any other rights the Plumbing Contractor may have, the Plumbing Contractor shall be allowed 10% (ten per cent) of the Contract Sum by the Employer as liquidated and ascertained damages. (Such amount shall include the costs recovered in terms of Clause 3.4).

- 13.2 Any unfixed materials required for the Plumbing Works and delivered to the property shall remain the property of the Plumbing Contractor until they have been paid for by the Employer in terms of Clause 11.

#### **14. DEFAULT**

##### **14.1 Plumbing Contractor's default**

- 14.1.1 If the Plumbing Contractor shall make default in any of the following respects :

14.1.1.1 without reasonable cause wholly suspends the Plumbing Works before completion;

14.1.1.2 refuses to proceed with the Plumbing Works with reasonable diligence;

14.1.1.3 refuses, after notice in writing from the Employer, to remove defective work or improper materials, then, if such default shall continue for fourteen days after a registered letter has been sent to the Plumbing Contractor by the Employer specifying the same, the Employer may, without prejudice to any other rights he may have in terms of this Agreement of in Law, by registered post determine the employment of the Plumbing Contractor, under this Agreement, provided no dispute has been declared in terms of Clause 15. In such event the Plumbing Contractor shall be liable for all damages incurred by the Employer by reason of such default.

- 14.1.2 If the Plumbing Contractor is placed under judicial management, the Employer may, without prejudice to any other right he may have in terms of this Agreement or in Law, by registered post determine the employment of the Plumbing Contractor under this Agreement.

##### **14.2. Employer's default**

- 14.2.1 Should the Employer be placed under judicial management, or should the Employer commit a breach of any of the terms of this Agreement, all of which terms shall be material, the Plumbing Contractor shall be entitled forthwith to give the Employer or his Trustee, per registered post, fourteen days written notice of the termination of this Agreement, without prejudice to any other rights which the Plumbing Contractor may have in terms of this Agreement or in Law.

- 14.2.2 Failure by the Employer to make payment in accordance with Clause 11 hereof shall entitle the Plumbing Contractor, on giving seven (7) days written notice to the Employer, to cease work under this Agreement until payment shall have been made to the Plumbing Contractor. The time during which such Plumbing Works shall cease shall operate as an extension of time for completion within the meaning of Clause 8.

- 14.3 In the event of a dispute between the parties to this Agreement, a certificate signed by a registered Quantity Surveyor specifying the amount due by the Employer to the Plumbing Contractor shall be sufficient proof of any amount due to the Plumbing Contractor in terms of this Agreement and may be sued by the Plumbing Contractor for the purposes of obtaining judgement by provisional sentence against the Employer in any Court of Law having jurisdiction in respect thereof. Where the Employer is in default the cost of obtaining the Quantity Surveyor's certificate shall be for the Employer's account.

**15. CONTRACT MEDIATION**

- 15.1 For the purposes of this agreement, the Institute of Plumbing SA shall be the mediator of any dispute between the employer and the plumbing contractor.
- 15.2 Should no solution be found as a result of the mediation process, the matter should then be referred to a court of law by either party to obtain a ruling with regard to the conditions of this agreement.

**16. JURISDICTION**

The parties hereby expressly consent to the jurisdiction of the Magistrates Court even though such claim may otherwise exceed that court's jurisdiction to adjudicate on any dispute arising out of this Agreement which is not otherwise subject to mediation in terms hereof. This clause is subject to the proviso that if a party elects to institute action in the High Court he shall be entitled to do so.

**17. ENTIRE AGREEMENT**

- 17.1 This Agreement constitutes the entire agreement between the parties and no alteration hereof or addition hereto shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.
- 17.2 No representations, warranties, undertakings or promises of whatever nature which may have been made by either party, their agents or servants, other than those herein contained shall be binding on or enforceable against either party.
- 17.3 It is agreed between the parties that the law of South African shall be the only law applicable to this Agreement.

**18. DOMICILIUM**

The parties hereby choose *domicilium citandi et executandi* at their respective addresses as set out in the interpretation clause, where all notices and/or processes arising out of or in connection with this Agreement may validly be delivered to or served upon them.

**19. SIGNING OF THE AGREEMENT**

19.1 The employer and the plumbing contractor agree to the terms and conditions of the IOP(SA) Plumbing Works Agreement

**THE EMPLOYER** .....

.....

**THE PLUMBING CONTRACTOR** .....

.....

**WITNESSES**

(1) .....

(2) .....

**DATE AGREEMENT SIGNED** .....

**Place at which this agreement was signed** .....

.....

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*This Contract Agreement may not be used under any circumstances where the Employer/Builder is bound by the conditions of a JBCC Contract Works Agreement.*