

TERMS & CONDITIONS



1 DEFINITIONS

“Act” means the relevant legislation for the State in which the work is to be performed;

“Authorised person” means the person or contractor directed by MBA and/or MBBF to perform the work;

“Completion Date” means the date when **Megasealed** finishes the Work in accordance with this Contract;

“Contract” means the Quotation, Plan and the Terms and Conditions as set out below;

“**Megasealed**” means **Megasealed Bathrooms Aust. Pty Ltd (“MBA”)** and includes its successors and permitted assigns and/
or **Megasealed Bathrooms & Balconies Franchise Aust Pty Ltd (“MBBF”)** and includes its authorised franchisees and permitted assigns

“Owner” means the person or entity entering into this Contract with **Megasealed** including the Owner’s agents and/or executors, administrators, successors and permitted assigns;

“parties” means **Megasealed** and the Owner;

“Plan” means the diagram (if any) included with the Quotation in relation to the Work;

“Price” means the price for the Work as set out in this Contract;

“Product” means a product used by **Megasealed** in relation to the Work;

“Product Warranty” means any product warranty expressly provided by **Megasealed** as set out in this Contract including in the Quotation or at the top of any page of this Contract;

“Quotation” means the Quote that accompanies these Terms and Conditions;

“Representative” means any person authorised by **Megasealed** in connection with this Contract;

“Site” means the location where the Work will be carried out as set out in the Quotation;

“Statutory Warranties” means the warranties provided by **Megasealed** in accordance with Clause 9;

“Variation” means Variation to the Work in accordance with Clause 8;

“Work” means the Work to be carried out by **Megasealed** in accordance with this Contract.

1.1 In this Contract a reference to a Clause means a Clause of this Contract unless otherwise stated.

2 QUALITY OF CONSTRUCTION

2.1 All Work done under this Contract will comply with:

2.1.1 the Building Code of Australia to the extent required under the relevant State legislation.

2.1.2 All other relevant codes, standards and specifications that the Work is required to comply with under any law; and

2.1.3 The conditions of any relevant development consent or complying development certificate and any construction certificate.

2.2 The liability of **Megasealed** for failure to comply with the Clause 2.1 is limited if the failure relates solely to a design or specification prepared by the Owner or on the Owner's behalf or a design or specification required and instructed by the Owner if **Megasealed** has advised the Owner in writing that it contravenes Clause 2.1.

3 PLANS AND WORK

3.1 The Plan and specifications for work to be done under this Contract, including any variations are taken to form part of this Contract.

3.2 Before **Megasealed** starts the Work the Owner must notify **Megasealed** of any matters that may affect the ability of **Megasealed** to undertake the Work such as previous repair Work to the Site or any report being done from a third party in relation to the Site or the Work.

NOTE: **Megasealed** have only carried out a visual inspection and all quotes provided are only on the tiled and grouted area. Should there be any external factors that may contribute toward any leak then it is recommended that the Owner either gets a plumber or obtains a Building Inspection Report. Where **Megasealed** repairs leaking showers or balconies with its "degout and regout" service we are replacing product and not enhancing the location or its surrounds.

3.3 **Megasealed** may re-grout or resurface or use a sealer where required as part of the Work, which is included in the Price.

3.4 Prior to application of a Product the surface of the Work area may need to be prepared with a chemical tile and stone etchant which may change the appearance of the tiles in some instances.

3.5 The Owner acknowledges:

3.5.1 the possible change in tile appearance with the use of a Product; and

3.5.2 such change in appearance will not be regarded as a defect under this Contract or a breach of any warranty whether statutory or otherwise.

3.6 All areas where the Work will be performed must be kept dry 24 hours prior to and 24 hours after the Work is carried out.

3.7 If the Work relates to a shower, it must not be used for 24 hours prior to commencement of the Work.

4 PLUMBING AND PAINTING

4.1 The Price does not include the cost of plumbing whether to drainage or otherwise and the Owner must contact a plumber for any plumbing issues that may be associated with the Work.

4.2 **Megasealed** will not carry out any painting or decorating whatsoever in relation to the Work.

5 LATENT DEFECTS, MOVEMENT AND HEALTH AND SAFETY 12

5.1 Subject to the applicable Statutory Warranties **Megasealed** shall not be liable for any damage to framework, structure or tiles, faults, defects, deterioration or wear and tear in relation to the Work that were not visible or apparent at the initial inspection on Site by Megasealed ("Latent Defects") but have appeared and/or deteriorated since the date of the inspection.

5.2 If **Megasealed** needs to carry out any additional work arising from the Latent Defects **Megasealed** may increase the Quotation to take account of the additional work.

5.3 If the Work includes a balcony repair, subject to the Statutory Warranties, **Megasealed** will not be liable for any claim arising from the movement of the structure on which the Work is carried out.

5.4 **Megasealed** may, at its discretion, refuse to carry out the Work if the health and safety of any Representative is exposed on Site and will request the Owner to rectify the problem at the Owner's expense before the Work can be carried out or continued.

6 PAYMENT BY THE OWNER

6.1 The Owner must pay the Price due to **Megasealed** on the Completion Date unless stated otherwise in the Quotation.

6.2 The Work will be regarded as complete when it is finished in accordance with this Contract, free of apparent defects and all rubbish and surplus material removed from the Site.

6.3 The Owner authorises **Megasealed** to deduct all monies due under this Contract from any funds held by **Megasealed** and/or from the Owner's credit card, where applicable, after the Work has been completed or any money is owing to **Megasealed** in accordance with this Contract.

6.4 If **Megasealed** agrees with the Owner in the Quotation to accept payment after the Completion Date the Owner shall pay **Megasealed** all monies due under this Contract within 30 days of the Completion Date ("Payment Period").

6.5 If the Owner does not pay **Megasealed** all outstanding monies owing under this Contract within the Payment Period unless otherwise stated in the Quotation the Owner must pay **Megasealed** interest at a rate equal to ten percent (10%) per annum on all monies owing to **Megasealed** from the end of the Payment Period until the date of actual payment.

7 TIME FOR COMPLETION

7.1 **Megasealed** will undertake and complete the Work within a reasonable time.

7.2 **Megasealed** will be entitled to a reasonable extension of time in the event of delays to the work where the cause of the delay is beyond **Megasealed's** control including but not limited to:

7.2.1 inclement weather that prevents **Megasealed** from proceeding with the Work;

7.2.2 the unavailability of materials for the Work;

7.2.3 industrial disputes;

7.2.4 Variations; or

7.2.5 Any other matter beyond the control of **Megasealed**.

7.3 Any rectification work carried out by **Megasealed** after the Completion Date shall not extend any warranty period set out in this Contract to the extent permissible by law.

8 VARIATIONS

8.1 The Work may be varied by agreement between the Owner and **Megasealed**.

8.2 Any Variation required by either party must be made in writing to the other party ("Variation Request"). The Variation Request must include a full description of the proposed Variation.

8.3 If the Variation as set out in the Variation Request is agreed the Variation must:

8.3.1 be in writing;

8.3.2 set out the cost of the additional or omitted Work;

8.3.3 set out any change to the Completion Date;

8.3.4 be signed by the parties and dated.

8.4 The price of any extra Work under a Variation will be added to the Price and the cost of any omitted Work under a Variation will be deducted from the Price.

8.5 The Work, Products or materials required under this Contract may be varied due to such other matters as could not reasonably be foreseen by an experienced contractor for the completion of the Work at the date of this Contract.

9 STATUTORY WARRANTIES

9.1 If the Work is residential building work under the relevant legislation **Megasealed** warrants that:

9.1.1. the Work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in this Contract;

9.1.2 all materials supplied by **Megasealed** will be good and suitable for the purpose for which they are used and, unless otherwise stated in this Contract, those materials will be new;

9.1.3. the Work will be done in accordance with, and will comply with, the relevant legislation or any other law;

9.1.4 the Work will be done with due diligence and within the time stipulated in this Contract, or if no time is stipulated, within a reasonable time;

9.1.5 If the Work consists of 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;

9.1.6 the Work and any materials used in doing the Work will be reasonably fit for the specified purpose or result, if the Owner expressly makes known to **Megasealed** or any other person with express or apparent authority to enter into or vary contractual arrangements on behalf of **Megasealed**, 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 **Megasealed's** skill and judgment.

9.1.7 The Statutory Warranties applying to the work performed under this contract remain the obligation and liability of the company that charged and invoiced the Owner for the services and product applications performed hereunder. These warranties are not transferrable or transferred or become the liability of any other company unless they have been formally assigned in writing to a company other than the company performing this contract.

10 ACCESS

10.1 The Owner must provide access for any Megasealed Representative to carry out the Work as required during Work hours allowed by relevant statutory authorities.

10.2 The Owner must remove any personal property likely to impede the Work at the Owner's expense if required.

Megasealed will not accept any liability for damage to personal property so removed.

10.3 Unless a minimum of 24 hours' notice is given to **Megasealed** if a Representative cannot access the Site or is unable to proceed with the Work for any reason an additional call out charge at the prevailing rate will be payable by the Owner to

Megasealed.

11 CLEANING UP

11.1 On completion of the Work, **Megasealed** must remove from the Site all of its tools and equipment and dispose of all rubbish, excavated material, vegetation, demolished or dismantled structures and surplus material relating to the Work.

11.2 All demolished, dismantled and surplus material will be the property of **Megasealed** unless otherwise specified in the Quotation.

12 INSURANCE FOR WORK AND PERSONAL INJURY

12.1 **Megasealed** maintains all compulsory insurances to cover its various liabilities prior to commencing any work under this Contract or is given access to the site.

12.2 If requested **Megasealed** must provide the Owner with proof that all such insurances have been taken out and are current.

12.3 Where required by law, **Megasealed** will obtain Home Warranty Insurance or equivalent cover for the work and provide a certificate copy to the Owner.

13 INDEMNITY IN FAVOUR OF OWNER

13.1 **Megasealed** will indemnify the Owner against any loss or liability for death, personal injury or property damage arising out of the Work, except to the extent that the Owner or an employee, agent or subcontractor of the Owner contributed to the loss or liability.

13.2 **Megasealed** will not be liable under Clause 13.1 if the death, personal injury or property damage was caused or contributed to by a design or specification prepared by or on behalf of the Owner.

14 DAMAGE TO PROPERTY

14.1 The Owner must remove any furniture or personal goods from the Site and immediate vicinity to minimise the risk of damage.

14.2 **Megasealed** warrants that it will take all reasonable care when removing grout on floor and wall joints.

15 MISREPRESENTATION

15.1 If the Owner or its employees, agents or contractors makes any misrepresentation to Megasealed that causes additional work, such additional Work will be a deemed Variation and added to the Price. Megasealed may, at its discretion, refuse to carry out such additional Work.

16 PRODUCT WARRANTY

16.1. **Megasealed** warrants the products listed here against defects for the following periods:

Megasealed™ – 5 Years from the date of application or the completion of the works.

Megasealed Gold™ – 5 Years from the date of application or the completion of the works.

Megasealed +™ – 5 Years from the date of application or the completion of the works.

Megagrout MG14™ – 5 Years from the date of application or the completion of the works.

Mega Gel – 5 Years from the date of application or the completion of the works.

Megaflex™ Flexible Sealant – 2 Years from the date of application or the completion of the works.

Megagrip™ – 3 Years from the date of application or the completion of the works.

Silicone carries a 24 month product warranty.

Wall grout carries a 24 month product warranty.

16.2. **Megasealed** products come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure or for compensation for any other reasonably foreseeable loss or damage.

16.3. This warranty does not cover damage, fault or failure due to external causes, including accident, misuse, tampering or interference with the product other than by an authorised **Megasealed** representative, failure to perform required maintenance, normal wear and tear, fire, flood or a similar occurrence and any attempt by any person other than an authorised **Megasealed** representative to adjust or repair the product.

16.4 For service products that are not branded by **Megasealed** the relevant manufacturer's warranty applies.

16.5. In the event of a defects claim the owner must follow the claims procedure outlined at Clause 18 of these Terms & Conditions.

17 ENTIRE CONTRACT & REPRESENTATIONS

17.1 This entire contract together with any documents signed, dated and attached to it constitutes the entire contract between **Megasealed** and the Owner. It supersedes all previous understandings, agreements or representations between **Megasealed** and the Owner whether in writing or otherwise.

17.2 **Megasealed** and the Owner acknowledge that no other statements, representations, inducements, promises or agreements made orally or otherwise by either of them are to be relied upon or binding.

18 NOTICE OF CLAIM

18.1 The Owner must notify Megasealed in writing within 10 business days after becoming aware of any matter or circumstance that may give rise to a claim under this Contract and set out details of the claim ("Notice of Claim").

18.2 If the Owner serves such a Notice Megasealed will within 14 days of receipt of the Notice respond to the Owner and request a date and time to inspect the Work on Site.

18.3 The Owner must allow **Megasealed** to rectify any defective Work that is capable of rectification and is required to be rectified under this Contract;

18.4 If **Megasealed** is required to carry out the rectification work **Megasealed** shall serve a further notice on the Owner within 14 days after the Site Inspection to nominate a mutually convenient date and time within 21 days of the Site Inspection for **Megasealed** to carry out the Rectification Work;

18.5 If **Megasealed** undertakes a Site Inspection and is not liable to rectify the alleged defective work set out in the Notice of Claim **Megasealed** shall be entitled to charge the Owner a call out fee for the Site Inspection at the prevailing rate at the time of the Site Inspection.

19 TERMINATION OF CONTRACT

19.1 If **Megasealed**:

19.1.1 goes into liquidation, administration or is otherwise without full capacity;

19.1.2 fails to complete the Work within a reasonable time;

19.1.3 fails to remedy defective Work or replace faulty or unsuitable materials or Products as provided in this Contract; or

19.1.4 otherwise breaches a term of this Contract The Owner may, where such default can be remedied, issue a written notice requiring **Megasealed** to remedy the default within 10 business days or within such other reasonable period as may be agreed.

19.2 If the default is not remedied within 10 business days or such other reasonable period as may be agreed, or is not capable of being remedied, the Owner may terminate this Contract by written notice to **Megasealed**.

19.3 If the Owner:

19.3.1 fails to make any payment due under this Contract; or

19.3.2 denies access to the Site to **Megasealed** to prevent the Work from proceeding; or

19.3.3 otherwise breaches a term of this Contract **Megasealed** may issue a written notice requiring the Owner to remedy the default within 10 business days of receipt of the notice by the Owner.

19.4 If the default is not remedied within 10 business days **Megasealed** may terminate this Contract by written notice to the Owner.

20 AUTHORITY

20.1 The Owner's agent, employee or contractor who signs this Contract on behalf of the Owner ("Owner's Signatory") warrants that it, he or she has authority to enter into this Contract on behalf of the Owner.

20.2 The Owner's Signatory will indemnify Megasealed against all loss or damages Megasealed may suffer arising from a breach of the warranty set out in Clause 20.1.

20.3 Any representative who signs this Contract on behalf of Megasealed ("Megasealed's Signatory") warrants that he or she has authority to enter into this Contract on behalf of Megasealed.

20.4 The Megasealed Signatory will indemnify the Owner against all loss or damages the Owner may suffer arising from a breach of warranty set out in Clause 20.3.

21 DISPUTES

21.1 If a party considers a dispute has arisen in relation to any matter covered by this Contract, that party must promptly give the other party written notice of the items of dispute.

21.2 The parties may confer with a mutually agreed third party to assist to resolve the dispute by mediation.

21.4 If applicable, the home warranty insurer should be notified of any dispute, which may be a prospective claim on the insurer.

22 NOTICES

22.1 Any written notice required to be given by this Contract or under the cooling off provision under the relevant legislation (if applicable) may be served by:

22.1.1 giving it to the party in person;

22.1.2 leaving it at the party's address shown in this Contract; or

22.1.3 sending it by registered post to the party's address shown in this Contract.

23 SEVERABILITY

23.1 Any condition of this Contract which is illegal, void or rendered unenforceable shall be severed from this Contract so that the legality, validity or enforceability of the remaining provisions of this Contract shall not be affected.

24 GOVERNING LAW AND JURISDICTION

24.1 This Contract is governed by the laws of the State in which the Work is carried out by **Megasealed**.

24.2 Each party irrevocably submits to the jurisdiction of the courts of that State.

25 AUSTRALIAN CONSUMER LAW

25.1 Despite anything to the contrary in this Contract:

25.1.1 this Contract is subject to the provisions of the Australian Consumer Law and the Australian Consumer Law prevails to the extent of any inconsistency.