

Terms and Conditions

These Terms and Conditions (**Terms**) govern your use of our Services offered by DEREK ALEXANDER BOYCE (ABN 42 121 998 714) trading as SHOWER TECH PERTH (**we, us, our**), and form a binding contractual agreement between us and you.

These Terms are important and should be read carefully. Any questions about these Terms must be directed to us in writing at info@showertechperth.au.

Subject to any subsequent agreements you may be required to enter with us, these Terms constitute the entire agreement between you and us and supersedes all prior agreements, conduct, representations and understandings. You confirm you have not entered into this agreement on the basis of any representation that is not expressly incorporated into this Terms.

1 DEFINITIONS

- 1.1 **Appointment** means an appointment for us to provide the Products and Services to you.
- 1.2 **Cancellation Charge** means where you cancel within 24 hours of an Appointment, and/or our technicians cannot obtain access to the Site for any reason. The Cancellation Charge is \$150 which may be applied for loss of earnings.
- 1.3 **Deposit** means where we provide our Services to you, and the provision of such Services amounts to over \$2,000. In such circumstances, we will charge a 50% booking deposit, and we reserve the right to ask for a 50% deposit on any other jobs at our sole discretion.
- 1.4 **Epoxy Call Out Fee** means where we receive a call to return to a Site on the basis that you think a shower/ balcony is leaking, and we identify that our Epoxy Grout is intact. The fee for this call out is \$100.
- 1.5 **Late Fee** means an additional charge applied when Services are requested be performed urgently and outside of our standard business hours. This fee compensates for the extra resources required to fulfill requests outside normal operating times. The Late Fee amount will be confirmed at the time of scheduling and added to the total Services cost.
- 1.6 **Products** means products we supply to you in order to provide the Services.
- 1.7 **Services** means the provision of the following services:
 - (a) small and large scale tile regrouting;
 - (b) leaking shower repairs;
 - (c) leaking balcony repairs;
 - (d) epoxy grouting;
 - (e) silicone replacement;
 - (f) leak detection;
 - (g) wall and floor tiling;
 - (h) shower screen replacement;

- (i) shower plumbing services; and
- (j) any other service we may offer.

1.8 **Rectification** means where we agree to rectify the work we have done, due to a mistake, poor workmanship or omission by us during the provision of the Services.

1.9 **Site** means the site we attend in order to provide our Products and Services in accordance with these Terms.

1.10 **Title** means title to any Products we provide you under these Terms.

1.11 **Validity Period** means the period provided for on the Quote we issue to you. The Quote is only valid and able to be used for that period of time. We reserve the right to amend this period based on each job we do, or customer who engages us.

2 ACCEPTANCE OF TERMS

2.1 By:

- (a) purchasing, or using the Products or Services offered by us, whether or not you have purchased or engaged our Products or Services either directly or indirectly, and irrespective of your capacity as an individual, as an employee of a business, or as a business; and/ or
- (b) where we provide you with a quote for our Services (**Quote**), by paying any amount to us in respect of our Services or otherwise instructing us to proceed with the Services in writing,

you acknowledge that you have read and understood these Terms and Quote, if applicable, and agree to be bound by them, and all our other policies.

3 VARIATIONS TO TERMS

3.1 We reserve the right to update and change these Terms from time to time subject to notice being provided.

3.2 You will be subject to the Terms in force at the time when you engage our Services, unless agreed otherwise by both parties in writing.

4 PRICES

4.1 All prices for our Products and Services are in Australian Dollars (AUD).

4.2 The price of our Products and Services will be provided to you by way of a written Quote, which will include the Validity Period.

4.3 All prices are inclusive of GST (if applicable) unless indicated otherwise, and exclude delivery charges and customs duty and other taxes, if applicable.

4.4 All prices are subject to change without notice.

4.5 We reserve the right to modify, cancel and limit any Service or work at any time.

4.6 You understand that we also charge the following:

- (a) Late fees;
- (b) Cancellation charge;

- (c) Deposit; and
- (d) Epoxy Call Out Fee.

5 PAYMENTS

- 5.1 We will send you invoices in the manner stated in the Quote and you agree to pay the invoices using the payment method specified in the Quote.
- 5.2 All fees are due on the date as specified on the invoice.
- 5.3 Some of our payments are operated through an online and automated billing system (Online Payment). Where your payments are made via Online Payment:
 - (a) You agree to ensure sufficient funds are available in your nominated account to meet any account withdrawals made by us on their scheduled due dates.
 - (b) If payment is defaulted or not received, you authorise us to debit any outstanding funds from your nominated account without need for notification at a future date.
- 5.4 Where another agent or enterprise is debiting funds pursuant to an arrangement entered into with us, you also affirm the same rights and undertakings explained in these Terms to them.
- 5.5 We reserve the right to suspend or terminate any Product or Service, at our discretion, if payment is defaulted.
- 5.6 We reserve the right to on-sell or otherwise authorise a debt-collection or other authorised agency to collect any amount not paid by you.
- 5.7 We reserve the right to inform credit watch monitoring services of ongoing default trends or payment-avoiding strategies employed where we deem it is appropriate.
- 5.8 In circumstances where we invoice you for payment, payment is due and payable by the payment date noted on the invoice. Failure to make payment by the payment date may lead to suspension of provision of our Product and/or Services.

6 GENERAL DISCLAIMER

- 6.1 We provide the Services on an "as-is" and "as available" basis and whilst every effort is taken to ensure the content provided is accurate, we make no representations and give no guarantees or warranties about the currency, suitability, reliability, availability, timeliness and/or accuracy of the content or information provided by us.
- 6.2 It is your responsibility to independently verify the content and information provided by us.
- 6.3 None of the information or content provided by us are a promise or guarantee of results or future earnings. Any information given (including case studies) is purely based on experience and is for illustrative purposes only.
- 6.4 You acknowledge and agree that we, our employees, affiliates and representatives are not responsible for decisions that you may make, or for any consequences, undesired or otherwise, that may flow from your engagement of the Services.

- 6.5 Any testimonials and examples of our Services, wherever published (online or in print) are not to be taken as a guarantee that you will achieve the same or similar results.
- 6.6 We make no warranty, representation, or guarantee regarding the suitability of our Products and Services for any particular purpose, nor do we assume any liability whatsoever arising out of the application or use of any Product. You shall not rely on any data and product specifications provided by us. It is your responsibility to independently determine suitability of any Products and to test and verify the same.
- 6.7 You acknowledge and agree that each Product and Service offering may have different terms, prices and fees, as contained in any Quote or contract entered into with you and us for those Services.
- 6.8 Any timelines or delivery dates are provided by us on an estimated basis only. We make no guarantee that these timelines or delivery dates will be met as there may be interfering factors beyond our control, and we are not responsible for any delay in the delivery of Products and Services.

7 SERVICE SPECIFIC DISCLAIMERS

- 7.1 You warrant that, at the time of the Appointment, the Site will be clear and access to the Site uninterrupted. We exclude any and all liability arising from your failure to ensure the Site is clear enough for us to provide our Products and Services.
- 7.2 Without limiting the generality of clause 7.1 this includes any damages sustained to any property.
- 7.3 You understand that as part of our Services, we are required to use Products which have certain chemical compositions. We are not liable to you for any change which may occur to any tiles or work surfaces as a result of us using certain Products. This includes, without limitation, any costs associated with remedying that change.
- 7.4 You also understand and agree that due to the nature of the Services we provide, where we have conducted work the Site must be kept dry for 24 hours after project completion. We are not responsible for any damage that occurs by reason of your failure to do so. You also agree that:
 - (a) the Site cannot be used the day we attend for the Appointment;
 - (b) the Site needs to be clean before we attend the Appointment;
 - (c) the Site needs to be clear for us to conduct our Services (e.g. no bottles, soap, or items in the bathroom).
- 7.5 Except for situations of Rectification, we will not be liable to you for any damage or loss sustained to adjoining tiles, carpets, flooring, paint which was not apparent to us at the time of the providing the Services.
- 7.6 Whilst we take reasonable care during the grout removal process, we will not be liable if any tiles lift, come loose or experience minor damage during the grout removal process. You agree to pay us additional charges which may apply if retiling is required.
- 7.7 Our Services are intended to replace the grout in tiled areas. If you identify a leak after we provide our services, we may inspect the grout. If the grout we provided is in good condition, we will not be liable for any leaks. You agree to pay us the Epoxy Call Out Fee where this occurs.
- 7.8 Where grout fails, we do not agree to cover any eventuating wall or floor damage which may occur, including without limitation, to tiles, carpets, flooring, paint, etc.

8 REPRESENTATIONS AND WARRANTIES

- 8.1 If we are regrouting a shower or balcony which has a substructure that is a timber frame, the provision of our Services and Products carries no warranty.
- 8.2 We do not provide a warranty for plumbing or shower screens, and in the case that this work is sub-contracted, if there are faults, we will direct you to the sub-contractor or supplier.
- 8.3 We provide a 25-year workmanship warranty. If the grout we provide you fails as a result of poor workmanship by us, we will return to the Site and rectify the issue free of charge.
- 8.4 We will not apply any warranties where a timber frame is present and/or we have identified structural movements. In such circumstances, we will advise you of this upon issuing our Quote to you.
- 8.5 We will not provide a warranty on any work that we have completed for free or as a gesture of goodwill.

9 TITLE

- 9.1 You understand that Title in any Products we provide during the provision of our Services does not pass to you until you have made payment to us in full in accordance with these Terms.
- 9.2 Depending on the value of the Products supplied under these Terms, we may have a security interest within the meaning prescribed by *the Personal Properties Securities Act 2009 (Cth)* (PPSA).
- 9.3 We reserve our right to enforce any PPSA rights, should the need arise.

10 RECTIFICATION

- 10.1 Where we offer Rectification to you which involves the replacement of certain items such as tiles, we will take reasonable steps to ensure that the replacement item we use is a match with the current item. We do not provide any guarantees that the replacement will be identical.

11 YOUR OBLIGATIONS

- 11.1 During the delivery of our Services, you agree to:
 - (a) respond promptly to our communications in relation to the Services;
 - (b) ensure the Site is safe and clear to access at the time of the Appointment;
 - (c) provide, within a reasonable amount of time, accurate, complete and current information or documentation reasonably required by us to perform the Services; and
 - (d) act in good faith.
- 11.2 When providing our Products and/or Services, we may request that you provide us with responses, feedback, completed questionnaires, copy content, images and other information so we can best deliver our Products and/or Services. You agree that you will provide any such information in a timely manner. Any delays in receiving this information may result in Products and/or Services not being provided by us to you.

12 CONFIDENTIALITY

- 12.1 Each party (Recipient) must keep secret and confidential and not disclose these Terms, or any Confidential Information which is or has been disclosed to the Recipient by the other party, its representatives or advisers, except:

- (a) where the information is in the public domain as at the date of these Terms or subsequently becomes in the public domain, other than by breach of any obligation of confidentiality binding on the Recipient;
- (b) if the Recipient is required to disclose the information by applicable law or the rules of any other document with statutory content requirements, provided that the Recipient has, to the extent practicable having regard to those obligations and the required timing of the disclosure, consulted with the provider of the information as to the form and content of the disclosure;
- (c) where the disclosure is expressly permitted under these Terms and Conditions or is required to give effect to these Terms and Conditions;
- (d) if disclosure is made to its personnel to the extent necessary to enable the Recipient to properly perform its obligations under these Terms and Conditions or to conduct their business generally, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
- (e) where the disclosure is required for use in legal proceedings regarding these Terms and Conditions; or
- (f) if the party to whom the information relates has consented in writing before the disclosure.

12.2 Each Recipient must ensure that its personnel comply in all respects with the Recipient's obligations under this clause.

12.3 Definitions

Confidential Information of a party means all information (in any form):

- (i) relating to, or arising from the Services; and
- (ii) that concerns that party's business operations and which any reasonable person would consider to be of a confidential nature (such as trade secrets, methods, strategies, client lists, pricing, and other business processes);

but does not include information that:

- (iii) is or becomes independently developed or known by a party through no breach of these Terms by that party; or
- (iv) becomes publicly available, without breach of these Terms;

12.4 This clause survives termination or expiry of these Terms.

13 COPYRIGHT AND TRADE MARK NOTICES

- 13.1 All material provided by us during the provision of our Services, including (but not limited to) templates, information, text, graphics, information architecture and coding (**Our Content**), is subject to copyright. While you may browse or print Our Content for non-commercial, personal or internal business use, you must obtain our prior written permission if you'd like to use, copy or reproduce it. Modification of Our Content for any other purpose is a violation of our copyright and other proprietary rights, and is strictly prohibited.
- 13.2 You acknowledge that you do not acquire any ownership rights by using Our Content.
- 13.3 The trade marks, logos, and service marks displayed on our Content to denote our brand are either registered or unregistered trade marks of us (**our Marks**). Our Marks, whether registered or unregistered, may not be used in connection with any product or service that does not belong to us, in any manner that is likely to cause confusion with customers, or in any manner that disparages us.

- 13.4 Nothing contained on our Content should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of our Marks without our express written permission.
- 13.5 You agree that damages may be an inadequate remedy to a breach of these Terms and acknowledge that we will be entitled to seek injunctive relief if such steps are necessary to prevent violations of our intellectual property rights.
- 13.6 This clause survives termination of these Terms.

14 RIGHT TO SUSPEND, TERMINATE AND REFUND

- 14.1 We reserve the right to suspend or terminate your use of our Services generally if you breach these terms, as determined by us in our sole discretion.
- 14.2 Either party may terminate your use of our Services by providing to the other party a minimum of 2 days' written notice, unless specified otherwise in any specific Product or Service Terms or contract you have entered into with us.
- 14.3 If you do not provide the 2 days' written notice, we may charge you the full amount of the Quote.
- 14.4 If you terminate our Services early (prior to your Services being completed), you acknowledge and agree that the outstanding fees for those Services are payable. We will issue an invoice for all work completed and expenses for Products (as the case may be) in the course of providing our Services up to the time and date that written notice was given to us that the Services were cancelled.
- 14.5 Refunds are not provided for our Products and/or Services, whether received by you or not, unless we are in breach of the Australian Consumer Law, as set out in Schedule 2 to the Australian *Competition and Consumer Act*, 2010 (Cth).
- 14.6 Any initial deposits paid to us for the provision of Services to you are non-refundable.
- 14.7 Final payments are non-refundable after the completion of our Services.
- 14.8 Any refund requests will be assessed on a case-by-case basis, in accordance with the costs associated with each Product and/or Service delivered by us, or otherwise where we determine in our sole discretion that genuine value has not been received or is not able to be received by you.

15 NON-EXCLUSIVITY

- 15.1 You acknowledge and agree that we may at all and any times provide our Services to other clients in the same or similar industry as you.
- 15.2 We do not provide our Services on an exclusive basis.
- 15.3 We will however endeavour to protect the confidential information you provide us and in accordance with our Privacy Policy.

16 DISCOUNTS, PROMOTIONS AND OFFERS

- 16.1 From time to time, we may offer the opportunity to purchase our Services at a discounted or promotional price, subject to these Terms.
- 16.2 Any discounts, promotions and offers will be confined to the time period and additional terms of sale in accordance with the details of that respective discount, promotion and/or offer as communicated to you by us.

17 LIABILITY IS LIMITED

- 17.1 We provide our Products and Services on an "as is" basis and without any warranties (other than those outlined in clause 8), representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by Law. Subject to the other terms of this clause, we exclude all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in these Terms to the maximum extent permitted by Law.
- 17.2 Without limiting the generality of clause 17.1, we expressly exclude any liability in contract, tort or otherwise for any injury, damage, loss, delay or inconvenience caused directly or indirectly by your use of our Products and Services.
- 17.3 Subject to the other terms of this clause, our maximum aggregate liability owed to you for any loss or damage or injury arising out of, or in connection with, the supply of our Services under these Terms, including any breach by us of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by you under these Terms in the one month period preceding the matter or the event giving rise to the claim.
- 17.4 The disclaimers, limitations of liability and indemnities within these Terms do not exclude rights that may not be excluded by Law, including but not limited to, those rights under the Australian Consumer Law.
- 17.5 If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law that cannot be excluded, our total liability to you for that failure is limited to, at our option, to the resupply of the Services or the payment of the cost of resupply.
- 17.6 Subject to the other terms of this clause, we exclude any liability owed to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms, including any loss of profits, loss of sales or business, loss of production, loss of agreements, loss of business opportunity, loss of anticipated savings, loss of, or damage to, goodwill or reputation, or loss of use or corruption of data or information.
- 17.7 This clause applies to the fullest extent permitted by Law and shall survive termination of these Terms.

18 INDEMNITY

- 18.1 You agree to indemnify us and our officers, agents, partners, directors, shareholders and employees and subcontractors, against any direct losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by us arising out of, or in connection with:
 - (a) your use of our Products and Services;
 - (b) any claim made against us or you by a third party arising out of, or in connection with the provision of our Products, Services and/or these Terms;
 - (c) any breach of these Terms by you, including any failure to pay any fees on time;
 - (d) the circulation, distribution or publication of any information or materials provided by you being contrary to Law;
 - (e) any reliance by you or a third party on our Products or Services or any advice or information provided in connection with the provision of our Products or Services and/or these Terms; and

(f) the enforcement of these Terms.

18.2 You must make payments under this clause in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by Law.

18.3 We are not responsible, and expressly limit our liability to the extent permitted by Law, which is without limitation to your rights under the Australian Consumer Law, for damages of any kind arising out of use, reference to, or reliance or use of any information provided during the provision of our Services.

18.4 This clause survives the termination of these Terms.

19 NO DISPARAGEMENT

19.1 At all times, you must not make any public or private statement or comment, whether oral or in writing, which in our reasonable opinion is adverse to the interest, reputation or commercial standing of or is in any respect a disparaging remark or representation about us and/or any of our Services nor any statement that is false and does or has the tendency to damage our reputation or by any method including but not limited to any social media platform or review website anywhere in the world.

19.2 Should you breach this clause, you hereby indemnify us in accordance with clause 18 above.

20 FORCE MAJEURE

20.1 We will not be in breach of these Terms or liable to you for any Loss incurred by that you may incur as a direct result of our failing to perform our obligations or being prevented, hindered or delayed in performing our obligations under these Terms where such prevention, hindrance or delay results from a Force Majeure Event.

20.2 If a Force Majeure Event occurs, we will notify you (Non-affected Party) in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.

20.3 On providing the notice in the above clause, we will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, we will continue to use all reasonable endeavours to perform those obligations.

20.4 The performance of the affected obligations will be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

20.5 References to a Force Majeure Event in this clause means: events, circumstances or causes beyond a party's reasonable control including (but not limited to):

(a) strikes, lock-outs or other industrial action;

(b) civil commotion, riot, invasion, cyber-attack, service attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

(c) fire, explosion, storm, flood, earthquake, subsidence or other natural disaster;

(d) epidemic, pandemic, health emergencies, disease;

(e) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

(f) interruption or failure of utility services (including the inability to use public, private telecommunications networks, servers or third party hosting platforms); and

(g) the acts, decrees, legislation, regulations or restrictions of any Government Agency; however does not include a lack of funds.

20.6 References to Loss in this clause means: any loss, liability, cost, charge, expense, tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).

21 SEVERABILITY

21.1 If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect.

22 NO ASSIGNMENT

22.1 You cannot transfer or assign your rights in accordance with these Terms, including any membership or registration with us, without our prior written consent.

22.2 We may assign or transfer our rights and obligations under these Terms at any time, upon prior written notice to you of at least 4 calendar weeks.

23 SUB-CONTRACTING

23.1 We are free to sub-contract any of our obligations under these Terms, but such sub-contracting will not release us from our liabilities under these Terms, except to extent outlined in clause 8.2.

24 BINDING ON SUCCESSORS

24.1 These Terms shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

25 DISPUTE RESOLUTION

25.1 If a dispute arises between the parties in relation to these Terms, the dispute must be dealt with in accordance with this clause.

25.2 Any party claiming that a dispute exists must notify the other party to the dispute (Second Party) in writing of the nature of the dispute.

25.3 In the case of claims against us, all notices are to be provided to info@showertechperth.au.

25.4 If the dispute is not resolved by agreement within 10 business days of the Second Party receiving the notice referred to above, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further 10 business days, or failing agreement within that period, a mediator as appointed by the executive director for the time being of the Australian Commercial Disputes Centre Limited.

25.5 Once a mediator is appointed, the parties agree that:

- (a) The costs of the mediator shall be borne equally between the disputing parties.
- (b) The chosen mediator shall determine the procedures for mediation.
- (c) The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.

25.6 If the parties have not mediated a resolution of the dispute within 10 business days of the selection of a mediator, neither party shall be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it considers fit in relation to the dispute.

25.7 Nothing in this clause prevents a party from commencing proceedings seeking urgent interlocutory relief from a court of competent jurisdiction to hear the matter, if, in that party's reasonable opinion, it is necessary to protect their rights.

25.8 Despite the existence of a dispute, the parties must continue to comply with their obligations under the contract.

25.9 This clause survives termination of these Terms.

26 APPLICABLE LAW

26.1 These Terms shall be construed in accordance with and governed by the laws of Western Australia, Australia. You consent to the exclusive jurisdiction of the courts in Western Australia, Australia to determine any matter or dispute which arises between us.

27 YOUR FEEDBACK

27.1 We welcome enquiries or feedback. Unless specifically stated by you, we shall treat any information you provide us with, as non-proprietary and non-confidential. Please see our Privacy Policy for further details.

27.2 If you have questions or comments regarding our Services, please email us at info@showertechperth.au.

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