

The following terms and conditions, in conjunction with our quotation, constitute the entire contract between us, as supplier of goods and services, and you, our customer, for carrying out construction work as defined in the Construction Contracts Act 2002 (the CCA),

#### **Definitions**

- 1.1 "Plumber" shall mean Ross's Plumbing Limited its successors and assigns or any person acting on behalf of and with the authority of Ross's Plumbing Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Plumber to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by the Plumber to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Plumber to the Client.
- 1.5 "Services" shall mean all services supplied by the Plumber to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Equipment" shall mean all Equipment including any accessories supplied on hire by the Plumber to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Plumber to the Client.
- 1.7 "Price" shall mean the price payable for the Goods as agreed between the Plumber and the Client in accordance with clause 3 of this contract.

#### **2. Acceptance**

- 2.1 Any instructions received by the Plumber from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Plumber shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Plumber.
- 2.4 The Client shall give the Plumber not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Plumber as a result of the Client's failure to comply with this clause.
- 2.5 Goods are supplied by the Plumber only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

#### **3. Price And Payment**

- 3.1 At the Plumber's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Plumber to the Client in respect of Goods supplied; or
  - (b) the Plumber's quoted Price (subject to clause 4) which shall be binding upon the Plumber provided that the Client shall accept the Plumber's quotation in writing within thirty (30) days.
- 3.2 Any price offered by the Plumber to the Client includes administration and material sourcing time allocation.
- 3.3 The Plumber may submit detailed progress payment claims in accordance with the Plumber's specified payment claim. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At the Plumber's sole discretion a non-refundable deposit may be required.
- 3.5 At the Plumber's sole discretion:
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Plumber.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **4. Variations**

- 4.1 The Plumber reserves the right to change the Price in the event of a variation to the Plumber's quotation. Variations include, without limitation, any change to the scope, quality or timing of the work, any circumstance that changes the cost of performing the work from that reasonably foreseeable at the time of the quotation, any variation due to unforeseen circumstances such as repairs required that were not visible at the quoting stage, or as a result of increases to the Plumber in the cost of materials and labour. Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Plumber's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.2 The Plumber will advise you as soon as practicable of any change to the contract price arising out of any variation. The Plumber may at their sole discretion on written notice withhold performance of any work that the Plumber reasonably considers to be a variation until the Plumber has received the Client's written instruction, or where the Plumber has submitted a price for a variation, the Client's agreement to that submitted price.
- 4.3 The Plumber is entitled to be paid progressively for the reasonable value of any variation whether or not the value of it has been agreed.

**5. Construction Contracts Act 2002**

**5.1 Claims and Payment.**

Where work is undertaken over a period exceeding one month, payment claims/invoices may be issued for progress payment covering work completed and costs incurred including variations up to the end of each month.

Payment of the claimed amount plus Goods and Services Tax and without any retention is due and payable by the 20<sup>th</sup> day of the following month. If the Client disagrees for any reason with the claimed amount, the Client will respond to the Plumber in writing with a payment schedule before payment is due, detailing a scheduled amount (the amount that the Client proposes to pay) and the Client's reasons and basis of calculation of any item in the payment claim that the Client does not propose to pay in full. The Client will then pay the scheduled amount by the due date. If the Plumber disagrees with the payment schedule the Plumber may refer the matter to adjudication (refer to Clause 5.4).

If payment is not made by the due date the Plumber reserves the right to give five (5) working days' notice of the Plumber's intention to suspend work. Work shall resume when the overdue payment has been made in full, and all costs and losses incurred in suspending and resuming work shall be a variation. The Plumber reserves the right to terminate the contract if such suspension continues for more than 10 working days, and the Client will be liable for all costs and losses including loss of profit arising out of such termination.

**5.2 No retentions are to be held unless expressly agreed in writing.**

**5.3 The Plumber as Contractor shall be entitled to exercise any or all powers available to it under the CCA including suspension of work, adjudication and seeking charging orders.**

**5.4 Disputes and Differences**

If any dispute or difference arises in connection with work done or payments claimed, or any other matter relating to this contract, both parties will endeavour to resolve the matter by amicable negotiation. Either party may at any time refer any dispute to adjudication in terms of Part 3 of the CCA, and may refer any matter that is not finally resolved by adjudication to arbitration under the Arbitration Act 1996.

**6. Delivery Of Goods**

**6.1 At the Plumber's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Plumber or the Plumber's nominated carrier).**

**6.2 At the Plumber's sole discretion the costs of delivery are included in the Price.**

**6.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.**

**6.4 The Plumber may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.**

**6.5 The failure of the Plumber to deliver shall not entitle either party to treat this contract as repudiated.**

**6.6 The Plumber shall not be liable for any loss or damage whatsoever due to failure by the Plumber to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Plumber.**

**7. Risk**

**7.1 If the Plumber retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.**

**7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Plumber is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Plumber is sufficient evidence of the Plumber's rights to receive the insurance proceeds without the need for any person dealing with the Plumber to make further enquiries.**

**8. Title**

**8.1 The Plumber and Client agree that ownership of the Goods shall not pass until:**

(a) the Client has paid the Plumber all amounts owing for the particular Goods; and

(b) the Client has met all other obligations due by the Client to the Plumber in respect of all contracts between the Plumber and the Client.

**8.2 Receipt by the Plumber of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Plumber's ownership or rights in respect of the Goods shall continue.**

**8.3 It is further agreed that:**

(a) where practicable the Goods shall be kept separate and identifiable until the Plumber shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods shall pass from the Plumber to the Client the Plumber may give notice in writing to the Client to return the Goods or any of them to the Plumber. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

(c) the Client is only a bailee of the Goods and until such time as the Plumber has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Plumber for the Goods, on trust for the Plumber; and

(d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Plumber will be the owner of the end products; and

(e) if the Client fails to return the Goods to the Plumber then the Plumber or the Plumber's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and the Plumber will not be liable for any reasonable loss or damage suffered as a result of any action by the Plumber under this clause.

**9. Goods Supplied by Client**

**9.1 Payment of any account issued by the Plumber constitutes acknowledgement by the Client that the Plumber shall not be liable or responsible in any way for any defects in the structure, materials, products or workmanship in goods or services where such defects are in goods or services supplied by the Client or any other third party.**

**10. Personal Property Securities Act 1999 ("PPSA")**

**10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:**

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

- (b) a security interest is taken in all Goods previously supplied by the Plumber to the Client (if any) and all Goods that will be supplied in the future by the Plumber to the Client.
- 10.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Plumber may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Plumber for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Plumber; and
  - (d) immediately advise the Plumber of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 The Plumber and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Plumber, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by the Plumber under clauses 10.1 to 10.5.
- 11. Defects**
- 11.1 The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify the Plumber of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Plumber an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Plumber has agreed in writing that the Client is entitled to reject, the Plumber's liability is limited to either (at the Plumber's discretion) replacing the Goods or repairing the Goods.
- 11.2 Goods will not be accepted for return other than in accordance with 11.1 above.
- 12. Warranty**
- 12.1 The warranty provided by the Plumber is one year on workmanship, and the suppliers warranty on the materials. The Terms and Conditions of this Guarantee are to be provided by the Plumber and are to be read in conjunction with the Terms of Trade herein.
- 13. Consumer Guarantees Act 1993**
- 13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Plumber to the Client.
- 14. Default & Consequences Of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at the Plumber's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Plumber.
- 14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Plumber from and against all costs and disbursements incurred by the Plumber in pursuing the debt including legal costs on a solicitor and own client basis and the Plumber's collection agency costs.
- 14.4 Without prejudice to any other remedies the Plumber may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Plumber may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Plumber will not be liable to the Client for any loss or damage the Client suffers because the Plumber has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to the Plumber's other remedies at law the Plumber shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Plumber shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Plumber becomes overdue, or in the Plumber's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Security And Charge**
- 15.1 Despite anything to the contrary contained herein or any other rights which the Plumber may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Plumber or the Plumber's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Plumber (or the Plumber's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Plumber elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Plumber from and against all the Plumber's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Plumber or the Plumber's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

## **16. Cancellation**

- 16.1 The Plumber may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Plumber shall repay to the Client any sums paid in respect of the Price. The Plumber shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by the Plumber (including, but not limited to, any loss of profits) up to the time of cancellation.

## **17. Privacy Act 1993**

- 17.1 The Client and the Guarantor/s (if separate to the Client) authorises the Plumber to:
- (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
  - (b) disclose information about the Client and/or Guarantors, whether collected by the Plumber from the Client and/or Guarantors directly or obtained by the Plumber from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.
- 17.2 Where the Client and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Client and/or Guarantors shall have the right to request the Plumber for a copy of the information about the Client and/or Guarantors retained by the Plumber and the right to request the Plumber to correct any incorrect information about the Client and/or Guarantors held by the Plumber.

## **18. Unpaid Plumber's Rights**

- 18.1 Where the Client has left any item with Plumber for repair, modification, exchange or for the Plumber to perform any other Service in relation to the item and Plumber has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Plumber shall have:
- (a) a lien on the item;
  - (b) the right to retain the item for the Price while the Plumber is in possession of the item;
  - (c) a right to sell the item.
- 18.2 The lien of the Plumber shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

## **19. Equipment Hire**

- 19.1 The Equipment shall at all times remain the property of the Plumber and is returnable on demand by the Plumber. In the event that the Equipment is not returned to the Plumber in the condition in which it was delivered the Plumber retains the right to charge the Price of repair or replacement of the Equipment.
- 19.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Plumber to the Client.
- 19.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Plumber's interest in the Equipment and agrees to indemnify the Plumber against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

## **20. General**

- 20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 20.3 The Plumber shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Plumber of these terms and conditions.
- 20.4 In the event of any breach of this contract by the Plumber the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 20.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Plumber nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.6 The Plumber may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Plumber reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Plumber notifies the Client of such change.
- 20.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.10 The failure by the Plumber to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Plumber's right to subsequently enforce that provision.