

Terms and Conditions of Trade

1. Interpretation:

In this contract, unless the context otherwise requires and specifically otherwise states:

- 1.1 "Amount Owing" means the Price charged by the Company for the Goods and/or Services, and any other sums which the Company is entitled to charge under the Contract.
- 1.2 "Company" means Plumbed Out Limited, its successors and assigns, or any related company or affiliate that may supply the Goods and/or Services from time to time.
- 1.3 "Customer" means the person or entity purchasing the Goods and/or Services from the Company pursuant to the Contract, including that person's successors and assigns. If it is more than one person, each of those persons' liability is joint and several.
- 1.4 "Claim" includes any claim:
 - For loss of profits; or
 - For any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
 - Any breach of the Company's obligations under this contract; or
 - Any cancellation of this contract; or
 - Any negligence, misrepresentation or other act or omission by the Company or its employees, agents or contractors; or
 - Compensation, demand, remedy, liability or action.
- 1.5 An "Event of Default" means an event where:
 - The Customer fails to comply with the terms of the Contract or any other contract with the Company; or
 - If the Customer fails to pay the Price by the due date indicated on the invoice; or
 - The Customer commits an act of bankruptcy; or
 - The Customer enters into any compromise or arrangement with its creditors; or
 - If the Customer is a company:
 - The Customer does anything which would make it liable to be put into liquidation; or
 - A resolution is passed or an application is made for the liquidation of the Customer; or
 - A receiver or statutory or official manager is appointed over all or any of the Customer's assets.
- 1.6 "Force Majeure Event" means an event which is beyond the Company's control or by reason of acts of God, fire, explosions, earthquakes, volcanic eruptions, storms, wars, hostilities, public disorders, quarantine restrictions, embargoes, strikes or other disturbances, or by reason of any other cause beyond its control whether or not similar to any of the foregoing.
- 1.7 "Goods" means all Goods ordered by the Customer and supplied by the Company under these terms (as detailed on each invoice issued to the Customer).
- 1.8 "Ownership" means the property in and legal and beneficial ownership.
- 1.9 "Order" means an Order placed by the Customer with the Company for the purchase of Goods and/or Services.
- 1.10 "Person" includes a corporation, association, firm, company, partnership or individual.
- 1.11 "Price" means the purchase Price for the Goods and/or Services confirmed by the Company in writing or on the invoice and any costs payable by the Customer under this contract relating to transportation, storage and insurance.
- 1.12 "PPSA" means the Personal Property Securities Act 1999.
- 1.13 References to any legislation includes as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 1.14 "Services" means services forming part of the supply of Goods including the installation of those Goods or any other services supplied by the Company to the Customer from time to time.

2. Application of Terms and Conditions of Trade

- 2.1 This contract forms the basis on which the Company supplies and sells Goods and/or Services to the Customer. Each such supply and sale shall be effected pursuant to the terms of this contract and any Guarantee (unless otherwise agreed in writing). Any invoices, Order or other document evidencing or describing any Goods and/or Services to be supplied to the Customer is incorporated into and forms part of this contract ("the Contract").
- 2.2 The Terms and Conditions of Trade ("Conditions") apply to all supplies of Goods and/or Services from time to time by the Company to the Customer. No variations to these conditions are binding unless agreed in writing by the Company and the Customer.
- 2.3 In consideration for the Company agreeing to supply and sell Goods and/or Services to the Customer, the Company may require the Customer to provide a Personal Guarantee on the form attached to the Contract.
- 2.4 The Customer acknowledges that the Company may, without liability on its part and without prejudice to any other right the Company has at law or in equity, by notice in writing to the Customer suspend or cancel in whole or in part the Contract in so far as it remains unperformed, at the time of an Event of Default occurring.

3. Payment Terms, Credit and Interest

- 3.1 If the Application for Credit has been approved the following credit terms shall apply:
 - (a) Payment is due in full on the 20th of the month following the issue of an invoice without deduction or set off.
 - (b) Should the Customer default in payment of any of the monies due to the Company then:
 - (i) All monies due to the Company shall immediately become due and payable and shall be paid on demand by the Company.
 - (ii) The Company shall be entitled to charge interest on any unpaid balance at the rate of 2.5% per month, calculated on a daily basis from the due date until the actual date of payment; and
 - (iii) Any expenses and other costs incurred by the Company in recovering any outstanding monies, including without limitation, debt collection fees together with all costs incurred in the recovery of the Goods, and/or legal fees on a solicitor/client basis shall be recoverable from the Customer, and the Customer shall indemnify the Company in respect of such expenses and costs.
- 3.2 The Company is entitled at any stage to decline or revoke any credit arrangement and/or to require such security or additional security as the Company in its absolute discretion thinks fit and/or to withhold the supply of Goods and/or Services or suspend any credit arrangements at any time until such security or additional security is provided.

4. Risk and Security

- 4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery.
- 4.2 Ownership of the Goods remains with the Company and does not pass to the Customer until the Customer pays the full Price owing to the Company in respect of those Goods.
- 4.3 While Ownership of the Goods remains with the Company:
 - (i) The Company authorises the Customer (as the Company's agent, but with no authority to represent to any other person that it is the Company's agent and without the Company being bound by or liable under the contracts with third parties to which the Customer is a party) in the ordinary course of its business to use the Goods but not sell any of the Goods without the consent of the Company. This authority is revoked from the time that an Event of Default occurs, or the Company notifies the Customer that this authority is revoked.
 - (ii) The Company, as the Customer's agent for the purpose of this clause, may use reasonable force to enter the premises (building site) where the Goods are stored and remove them. The Company shall exercise reasonable care in entering and removing such Goods, but shall not be liable for any damage caused by the use of reasonable force. The Company may resell any Goods and apply the

proceeds of sale in reduction of any amounts owing to the Company by the Customer ("the Customer's Indebtedness") as the Company thinks fit.

- (iii) The Customer must advise the Company immediately of any Event of Default or any actions of third parties which may affect the Company's interest in the Goods.
- 4.4 The Company may apply any payments received from or on behalf of the Customer (where the Customer has not specified the purpose of the payment) in reduction of the Customer's Indebtedness as the Company thinks fit.
- 4.5 If any Goods are resold before ownership of those Goods has passed to the Customer, the proceeds of such sale shall be received and held by the Customer in trust for the Company to the extent of the Customer's Indebtedness and claimable by the Company in the event of the Customer's default.
- 4.6 The Company may bring an action for the Price of the Goods even where Ownership of the Goods has not passed to the Customer.
- 4.7 The Customer must insure and keep insured with a reputable insurance company all Goods in its possession or control from time to time against risk of loss or damage by hazards normally insured against. The Customer must, on request by the Company, provide evidence of such insurance cover.
- 4.8 For the purpose of this clause 4 and in any case in which Goods are processed before payment of the Customer's Indebtedness, the term "Goods" includes products, parts or components which can be identified as being substantially derived from the Goods supplied by the Company.
- 4.9 Until Ownership of the Goods passes to the Customer:
 - (i) The Customer shall keep proper stock records and records of account with respect to its purchase, receipt, sale and parting with possession of the Goods; and
 - (ii) The Customer shall make those records available to the Company at its reasonable request and upon any failure to do so (and without limiting the Company's other rights and remedies), the Company may enter, and use reasonable force to enter, the premises where the records are kept and have access to them, copy them and/or remove them.
- 4.10 In respect to any Goods supplied to the Customer:
 - (i) The Customer grants to the Company a security interest under the PPSA in all the Goods the Company agrees to sell to the Customer under the Contract, as security for payment of the Customer's Indebtedness and for the performance from time to time of the Customer's other obligations to the Company under the Contract. The Customer, upon entering into the Contract with the Company, agrees to sign any additional documentation which may be necessary to enable a financing statement to be registered against the Goods which the Customer has or will from time to time purchase from the Company. The Customer shall not create or allow to be created a lien over any of the Goods under its ownership or control;
 - (ii) The Company may allocate all amounts received from the Customer in any manner it determines, including any manner required to preserve any purchase money security interest in the Goods; and
 - (iii) The Customer agrees that to the extent permissible under the PPSA, the Company expressly excludes its obligations to the Customer under the PPSA and the Customer waives all its rights against the Company to the extent permissible under the PPSA.
 - (iv) In particular where Goods are retained by the Company pursuant to clause 4.3, the Customer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.

5. Warranties

- 5.1 Subject to clause 5.2 below, the Company warrants that Goods and/or Services which do not comply with the Contract shall be repaired, replaced or made good by the Company or the Price refunded. The Company shall have the sole discretion to elect which remedy will apply. These are the sole remedies available to the Customer for default by the Company. This warranty does not extend to Goods that have been altered, added to, or otherwise changed nor does it cover any defect caused by willful damage, abuse or abnormal usage.

- 5.2 Claims with respect to non-conforming or defective Goods or faulty Services will only be accepted if made to the Company in writing within 90 days after supply, or such further period as the Company may agree, and the Company has first been given the opportunity to inspect the Goods and/or Services and agrees to their return/repair or replacement.
- 5.3 To the extent permitted by law, the Company expressly excludes liability for any Claim by the Customer (or any other person) relating to or arising from the supply of the Goods and/or Services which is not notified to the Company in accordance with the provisions of clause 5.2 above, and the Customer agrees to indemnify the Company against any such claim.
- 5.4 In any event, the Company's liability arising out of any Claim or otherwise under the Contract shall not exceed the Price of the Goods and/or Services. No claim may be made against the Company for consequential damages or loss of profits.
- 5.5 The only guarantees agreed to by the Company are those confirmed by the Company in writing.
- 5.6 In respect of any Goods and/or Services supplied to a Customer:
- (i) Where Goods and/or Services are acquired by the Customer for the purposes of a business the guarantees contained in the Consumer Guarantees Act 1993 ("the CG Act") do not apply and are hereby excluded.
 - (ii) The Customer agrees to indemnify the Company against any liability or cost incurred by the Company under the CG Act as a result of any breach by the Customer of its obligations under that Act to any person; and
 - (iii) Nothing in these terms is intended to have the effect of contracting out of the provisions of the CG Act except to the extent permitted under that Act. Accordingly where the Customer is not acquiring the Goods and/or Services for the purposes of a business the provisions and guarantees contained in the CG Act shall apply to such Goods and/or Services.

6. Payment Validity

- 6.1 The Customer acknowledges that the Company continues to supply the Customer on the condition that all payments received by the Company from the Customer are valid and made in the ordinary course of the Customer's business.
- 6.2 The Customer acknowledges that the Company receives all payments in the ordinary course of the Customer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Customer gives notice in writing to the Company:
- (i) Of the Customer's then inability to pay its due debts; and
 - (ii) That the Customer's intention or purpose in making any such payment is to enable the Company to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Customer.

Until receipt of such notice, the Company shall be entitled to assume that all payments received from the Customer are made in the ordinary course of the Customer's business.

- 6.3 The Customer acknowledges that the Company has, by accepting each payment from the Customer on the due date, altered its position in reliance on the validity of that payment by:
- (i) The continued supply by the Company to the Customer after the receipt of such payment, whether or not those Goods and/or Services are paid for by the Customer;
 - (ii) Using the payment for the Company's own purposes; and
 - (iii) By foregoing its right to take action against the Customer pursuant to the security interest in the relevant Goods under the PPSA (if any), and against any guarantor in relation to the late payment.

7. Force Majeure

- 7.1 Without limiting the foregoing, the Company shall not be liable for any delay or failure in the performance of any obligation or the exercise of any right under the Contract or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.
- 7.2 The obligations of the Company which are affected by the Force Majeure Event shall be suspended during the continuance of the Force Majeure Event.
- 7.3 If the Force Majeure Event prevents or hinders performance of the Contract for a continuous period of 90 days the Customer may, on not less than 14 days prior written notice to the other party, terminate that contract.

8. Use of Information

- 8.1 The Customer agrees that the Company may obtain information about the Customer from the Customer or any other person and any credit or debt collection agencies) in the course of the Company's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing the Company with such information.
- 8.2 The Customer agrees that the Company may use any information it has about the Customer relating to the Customer's creditworthiness and, subject to any confidentiality agreement between the Customer and the Company, give that information to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes. The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for the use in the course of its business, including direct marketing activities.
- 8.3 The Customer must notify the Company of any change of circumstances which may affect the accuracy of the information provided by the Customer to the Company.

9. Arbitration

- 9.1 Either party may require any dispute arising in relation to the Contract which has not been resolved within 14 days to be referred to arbitration, in accordance with the Arbitration Act 1996 or any enactment in substitution thereof.

10. Other Agreements

- 10.1 If there is any inconsistency between the Conditions, the terms of any Order submitted by the Customer (whether in writing, verbally or otherwise) or any other arrangement between the parties, the Conditions prevail unless otherwise agreed in writing by the parties.

11. Waiver

- 11.1 If the Company exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Company's rights in exercising that or any other right or remedy unless expressly specified in writing and signed by an authorised representative of the Company.
- 11.2 No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of any breach is not a waiver of any other breach.

12. No Assignment

- 12.1 The Customer must not transfer or assign its rights directly or indirectly under the Contract to anyone else without the Company's prior consent in writing.
- 12.2 Should there be a change in the legal or beneficial ownership of the shares of the Customer (if a company) or issue of new capital, whereby in either case there is a change in the effective management or control of the Company the Customer shall immediately advise the Company of such change in writing.

13. Special Conditions

- 13.1 All Services provided to the Customer shall be to the standards required by current Codes of Practice as

issued by the Plumbers, Gasfitters & Drain Layers Board from time to time.

- 13.2 When the Customer has been served a Payment Claim for the supply of Goods and/or Services, the conditions of the payment are issued under section 20 of the Constructions Contracts Act 2002 as indicated on the reverse of the Payment Claim form.
- 13.3 Where the Company provides a quote or tender, acceptance of the Company's quote/tender by the Customer must be in writing and must include the Customer's order number and such acceptance must be notified prior to any work commencing.

14. Governing Law

- 14.1 All contracts for Goods and/or Services supplied to a Customer registered in New Zealand shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 14.2 If for any reason one or more of the provisions of the Contract is unenforceable, it shall be severed and all the provisions shall remain binding.