

# Merwood Plumbing & Drainage Ltd T/A Laser Plumbing Taupo – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Plumber" means Merwood Plumbing & Drainage Ltd T/A Laser Plumbing Taupo, its successors and assigns or any person acting on behalf of and with the authority of Merwood Plumbing & Drainage Ltd T/A Laser Plumbing Taupo.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Plumber to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works or Materials supplied by the Plumber to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Plumber and the Customer in accordance with clause 5 below.
- 2. Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Plumber.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Plumber in relation to Materials or Works supplied is given in good faith, is based on the Plumber's own knowledge and experience and shall be accepted without liability on the part of the Plumber and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.
- 2.4 In the event that the Plumber is required to provide the Works urgently, that may require the Plumber's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Plumber reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Plumber and the Customer.
- 2.5 If the Plumber has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 2.6 The Customer acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Plumber reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 5.2. In all such cases the Plumber will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order on hold until such time as the Plumber and the Customer agree to such changes.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 These terms and conditions may be meant to be read in conjunction with the Plumber's Hire Form, and:
- (a) where the context so permits, the terms 'Works' or 'Materials' shall include any supply of Equipment, as defined therein; and
- (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 3. Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that the Plumber shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Plumber in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Plumber in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Plumber, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Customer shall give the Plumber not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number(s), change of trustees or business practice). The Customer shall be liable for any loss incurred by the Plumber as a result of the Customer's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At the Plumber's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Plumber to the Customer in respect of Works performed or Materials supplied; or
- (b) the Plumber's quoted Price (subject to clause 5.2) which shall be binding upon the Plumber provided that the Customer shall accept the Plumber's quotation in writing within thirty (30) days.
- 5.2 The Plumber reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Works are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to the Plumber in the cost of labour or materials which are beyond the Plumber's control.
- 5.3 Variations will be charged for on the basis of the Plumber's quotation, and will be detailed in writing, and shown as variations on the Plumber's invoice. The Customer shall be required to respond to any variation submitted by the Plumber within ten (10) working days. Failure to do so will entitle the Plumber to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Plumber's sole discretion a deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Plumber, which may be:
- (a) on completion of the Works; or
- (b) by way of agreed payments in accordance with the Plumber's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
- (c) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Plumber.
- 5.6 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 5.7 Payment may be made by cash, cheque, electronic-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Plumber.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Plumber nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Plumber is a claim made under the Construction Contracts Act 2002.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Plumber an amount equal to any GST the Plumber must pay for or on any supply of the Plumber under this or any other contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Works**
- 6.1 Subject to clause 5.2 it is the Plumber's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Plumber claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Plumber's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify the Plumber that the site is ready.
- 6.3 At the Plumber's sole discretion, the cost of delivery is included in the Price.
- 6.4 The Plumber may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by the Plumber for delivery of the Works is an estimate only and the Plumber will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Plumber is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then the Plumber shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 7. Risk**
- 7.1 If the Plumber retains ownership of the Materials under clause 12 then:
- (a) where the Plumber is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Plumber or the Plumber's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address);
- (b) where the Plumber is to both supply and install Materials then the Plumber shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests the Plumber to leave Materials outside the Plumber's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or latent or unfavourable soil conditions such as liquefaction residue or risk) that the Plumber, or the Plumber's employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then the Plumber shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 6.2 above) until the Plumber is satisfied that it is safe for the installation to proceed.
- 7.4 The Plumber shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Plumber accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.5 The Customer acknowledges and accepts that:
- (a) the Plumber is only responsible for components that are replaced by the Plumber and does not at any stage accept any liability in respect of previous materials and/or works supplied by any other third party that subsequently fail and found to be the source of the failure; and
- (b) where the Customer has supplied materials for the Plumber to install, the Customer acknowledges and accepts that the Plumber's responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Plumber shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer. Furthermore, whilst every care shall be taken by the Plumber, any loss or damage to the Customer's materials and/or existing fixtures, fittings or property during Works by the Plumber shall be at the Customer's own risk; and
- (c) the Plumber shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b) apply.
- 7.6 In the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Plumber against any costs incurred by the Plumber as a consequence of such discovery and the subsequent engagement of third-party contractors for the removal of such substances. This will be charged for as a variation in accordance with clause 5.2. Under no circumstances will the Plumber handle removal of asbestos product.
- 7.7 All descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Plumber's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Plumber.
- 7.8 The presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where the Plumber is requested to merely clear such blockages, the Plumber can offer no guarantee against recurrence or further damage. In the event of collapse during the pipe clearing process, the Plumber will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 7.9 In the event that the Customer requests the Plumber to use drain/pipe unblocking equipment, and the Plumber does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the Plumber may require the Customer or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 7.10 Where the Plumber has performed temporary repairs that:
- (a) the Plumber offers no guarantee against the recurrence of the initial fault, or any further damage caused; and
- (b) the Plumber will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 7.11 The Customer also acknowledges that Materials supplied may:
- (a) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time, the Plumber will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 8. Customer's Responsibilities**
- 8.1 Prior to the Plumber commencing the Works the Customer must advise the Plumber of the precise location of all services on the site and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. The Customer will take all care to avoid damage to any underground services, the Customer agrees to indemnify the Plumber in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 8.1.
- 8.2 It is the intention of the Plumber, and agreed by the Customer, that it is the responsibility of the Customer to:
- (a) ensure that the Plumber has clear and free access to the site at the agreed dates and times to enable the Plumber to undertake the Works; the Plumber shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the Plumber's negligence; and
- (b) provide and have erected scaffolding to enable the Works to be undertaken (where in the Plumber's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and
- (c) provide the Plumber with facilities, as specified by the Plumber, (including, but not limited to, a suitable free power source) for the duration of the Works.
- 9. Surplus Materials**
- 9.1 Unless otherwise stated elsewhere in this contract:
- (a) only suitable new Materials will be used; and
- (b) demolished materials remain the Customer's property; and
- (c) Materials that the Plumber brings to the worksite which are surplus remain the property of the Plumber.
- 10. Compliance with Laws**
- 10.1 The Customer and the Plumber shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the Works.
- 10.3 The Customer warrants that any existing plumbing, gasfitting and/or associated services in or upon the Worksite that is subject to the Materials and/or Works are in compliance with regulations. The Plumber reserves the right to halt all Works (in accordance with the provisions of clause 5.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances, then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Plumber will charge a standard fee for the time spent on Worksite based on the Plumber's quotation.
- 10.4 Notwithstanding clause 10.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act"), the Plumber agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether the party in control of the Worksite or where they may be acting as a sub-contractor for the Customer who has engaged a third party head contractor.
- 11. Insurance**
- 11.1 The Plumber shall have public liability insurance of at least five million dollars (\$5m). It is the Customer's responsibility to ensure that they are similarly insured.
- 12. Title**
- 12.1 The Plumber and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid the Plumber all amounts owing to the Plumber; and
- (b) the Customer has met all of its other obligations to the Plumber.
- 12.2 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.
- 12.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Plumber on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Plumber and must pay to the Plumber the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
- (c) the production of these terms and conditions by the Plumber shall be sufficient evidence of the Plumber's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Plumber to make further enquiries;
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Plumber and must pay what the proceeds to the Plumber on demand;
- (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Plumber and must sell, dispose of or return the resulting product to the Plumber as it so directs;
- (f) unless the Materials have become fixtures the Customer irrevocably authorises the Plumber to enter any premises where the Plumber believes the Materials are kept and recover possession of the Materials;
- (g) the Plumber may recover possession of any Materials in transit whether or not delivery has occurred;
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Plumber;
- (i) the Plumber may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

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- (b) a security interest is taken in all Materials that have previously been supplied and that will be supplied in the future by the Plumber to the Customer and the proceeds from such Materials.
- 13.2 The Customer undertakes to:
- 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;
  - 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 Materials charged thereby;
  - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or the proceeds of such Materials in favour of a third party without the prior written consent of the Plumber; and
  - immediately advise the Plumber of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Plumber and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Plumber, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Plumber under clauses 13.1 to 13.5.
- 14. Security and Charge**
- 14.1 In consideration of the Plumber agreeing to supply the Works, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 14.2 The Customer indemnifies the Plumber from and against all the Plumber's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Plumber's rights under this clause.
- 14.3 The Customer irrevocably appoints the Plumber and each director of the Plumber as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects in Materials**
- 15.1 The Customer shall inspect the Materials on delivery and shall within seventy-two (72) hours 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 Customer shall afford the Plumber an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage, or defective Materials, which the Plumber has agreed in writing that the Customer is entitled to reject, the Plumber's liability is limited to either (at the Plumber's discretion) replacing the Materials or repairing the Materials.
- 15.2 Materials will not be accepted for return other than in accordance with 15.1 above.
- 16. Returns**
- 16.1 Returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 15.1; and
  - the Plumber has agreed in writing to accept the return of the Materials; and
  - the Materials are returned at the Customer's cost within seventy-two (72) days of the delivery date; and
  - the Plumber will not be liable for Materials which have not been stored or used in a proper manner; and
  - the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.2 The Plumber will not accept the return of non-defective Materials for credit.
- 16.3 Non-stockist items or Materials made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 17. Warranties**
- 17.1 Subject to the conditions of warranty set out in clause 17.2 the Plumber warrants that if any defect in any workmanship of the Plumber becomes apparent and is reported to the Plumber within twelve (12) months of the date of delivery (time being of the essence) then the Plumber will either (at the Plumber's sole discretion) replace or remedy the workmanship.
- 17.2 The conditions applicable to the warranty given by clause 17.1 are:
- the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - failure on the part of the Customer to properly maintain any Materials; or
    - failure on the part of the Customer to follow any instructions or guidelines provided by the Plumber; or
    - any use of any Materials otherwise than for any application specified on a quote or order form; or
    - the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - fair wear and tear, any accident or act of God.
  - the warranty shall cease and the Plumber shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Plumber's consent.
  - in respect of all claims the Plumber shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 17.3 For Materials not manufactured by the Plumber, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Plumber shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
- 18. Consumer Guarantees Act 1993**
- 18.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Plumber to the Customer.
- 19. Intellectual Property**
- 19.1 Where the Plumber has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Plumber, and shall only be used by the Customer at the Plumber's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Plumber.
- 19.2 The Customer warrants that all designs, specifications or instructions given to the Plumber will not cause the Plumber to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Plumber against any action taken by a third party against the Plumber in respect of any such infringement.
- 19.3 The Customer agrees that the Plumber may (at no cost) use for the purposes of marketing or entry into any competition, any documents,
- designs, drawings, plans or products which the Plumber has created for the Customer.
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) 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.
- 20.2 If the Customer owes the Plumber any money the Customer shall indemnify the Plumber from and against all costs and disbursements incurred by the Plumber in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Plumber's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the Plumber may have under this contract, if a Customer has made payment to the Plumber, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Plumber under this clause 20, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 20.4 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 Customer which remains unfulfilled and all amounts owing to the Plumber shall, whether or not due for payment, become immediately payable if:
- any money payable to the Plumber becomes overdue, or in the Plumber's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer has exceeded any applicable credit limit provided by the Plumber;
  - the Customer becomes insolvent or bankrupt, 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
  - a receiver, manager or liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 21. Cancellation**
- 21.1 Without prejudice to any other rights or remedies the Plumber may have, if at any time the Customer is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this contract within ten (10) working days of receipt by the Customer of this notice) then the Plumber may suspend the Works immediately. The Plumber will not be liable to the Customer for any loss or damage the Customer suffers because the Plumber has exercised its rights under this clause.
- 21.2 The Plumber may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice the Plumber shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Plumber for Works already performed. The Plumber shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Plumber as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 Cancellation of orders for products made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by the Plumber is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. The Plumber acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (the "Act") including Part II of the OECD Guidelines as set out in the Act. The Plumber acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Plumber that may result in serious harm to the Customer, the Plumber will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act unless approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Plumber in respect of cookies where the Customer utilises the Plumber's website to make enquiries. The Plumber agrees to display reference to such cookies and similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to the Plumber when the Plumber sends an email to the Customer, so the Plumber may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Plumber's use of cookies on the Plumber's website and later wishes to withdraw that consent, the Customer may manage and control the Plumber's privacy controls via the Customer's web browser, including removing cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer authorises the Plumber or the Plumber's agent to:
- access, collect, retain and use any information about the Customer;
    - (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - for the purpose of marketing products and services to the Customer.
  - disclose information about the Customer, whether collected by the Plumber from the Customer 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 issuing a default by the Customer.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Customer shall have the right to request (by e-mail) from the Plumber, a copy of the Personal Information about the Customer retained by the Plumber and the right to request that the Plumber correct any incorrect Personal Information.
- 22.6 The Plumber will destroy Personal Information upon the Customer's request (by e-mail) if it is no longer required unless it is required in order to fulfil the obligations of this contract or required to be maintained and/or stored in accordance with the law.
- 22.7 The Customer can make a privacy complaint by contacting the Plumber via e-mail. The Plumber will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 23. Suspension of Works**
- 23.1 Where the contract is subject to the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:
- the Plumber has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
    - the payment is not paid in full by the due date for payment in accordance with clause 5.5 and/or any subsequent amendments to new legislation and no payment schedule has been given by the Customer; or
    - a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
  - the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Plumber by a particular date; and
  - the Plumber has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Plumber suspends work, it:
- is not in breach of contract; and
  - is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
  - is entitled to an extension of time to complete the contract; and
  - keeps its rights under the contract including the right to terminate the contract and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Plumber exercises the right to suspend work, the exercise of that right does not:
- affect any rights that would otherwise have been available to the Plumber under the Contract and Commercial Law Act 2017; or
  - enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Plumber suspending work under this provision.
- (d) due to any act or omission by the Customer, the Customer effectively precludes the Plumber from continuing the Works or performing or complying with the Plumber's obligations under this contract, then without prejudice to the Plumber's other rights and remedies, the Plumber may suspend the Works immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by the Plumber as a result of such suspension and recommencement shall be payable by the Customer as if they were a variation.
- 23.2 If pursuant to any right conferred by this contract, the Plumber suspends the Works and the default that led to that suspension continues un-remedied subject to clause 21.1 for at least ten (10) working days, the Plumber shall be entitled to terminate the contract, in accordance with clause 21.
- 24. Service of Notices**
- 24.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this contract;
  - by sending it by registered post to the address of the other party as stated in this contract;
  - if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. Trusts**
- 25.1 If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Plumber may have notice of the Trust, the Customer covenants to the Plumber as follows:
- the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - the Customer will not without consent in writing of the Plumber (the Plumber will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - the removal, replacement or retirement of the Customer as trustee of the Trust;
    - any alteration to or variation of the terms of the Trust;
    - any advancement or distribution of capital of the Trust; or
    - any resettlement of the trust property.
- 26. General**
- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision, 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.
- 26.3 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.
- 26.4 The Plumber shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Plumber of these terms and conditions (alternatively the Plumber's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 26.5 The Plumber may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 26.6 The Customer cannot licence or assign without the written approval of the Plumber.
- 26.7 The Plumber may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Plumber's sub-contractors without the authority of the Plumber.
- 26.8 The Customer agrees that the Plumber may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Plumber to provide Works to the Customer.
- 26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulatory directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Plumber.
- 26.10 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.