

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "We", "us" and "our" shall mean Plumbing & Heating Centre Limited, or any agents or employees thereof.
- 1.2 "You", "your", and "yourself" shall mean any person or entity receiving products and/or services from us, and any person acting on behalf of and with the authority of that person or entity.
- 1.3 "Products and Services" shall mean:
 - 1.3.1 all goods, services and advice provided by us to you and shall include without limitation the supply of all plumbing, gasfitting, drain laying, roofing, wood/gas fire installations and the supply of all associated products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by us to you; and
 - 1.3.2 all of your present and after-acquired Products that we have performed work on or to or in which goods or materials supplied or financed by us have been attached or incorporated.
 - 1.3.3 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Price" shall mean the total cost to you of the Products and Services as appearing in any invoice issued by us and may include all disbursements e.g. charges we pay to others on your behalf. GST is payable by you in addition to the price unless we expressly state otherwise in writing.

2. ACCEPTANCE

- 2.1 These terms and conditions apply to the supply of any Products and Services supplied or provided by us to you and prevail over any other terms even if before this agreement or at some later date we purport to accept other terms unless we do so expressly under this clause.
- 2.2 On requesting or placing any order for products and services from or with us, you shall be deemed to have read, understood and accepted these terms and conditions.
- 2.3 We reserve the right to review and change these terms and conditions at any time.

3. YOUR DETAILS

- 3.1 You will at our request promptly provide all necessary complete, accurate, up-to-date information that we deem relevant to consider your credit application and/or the ongoing supply of credit to you. We may refuse to provide credit to you if the requested information is not provided.
- 3.2 You shall give us at least 14 days' prior written notice of any proposed change in your contact details including, but not limited to, changes of operational control, directorship, address, and/or trading name.
- 3.3 You authorise us to collect, retain and use any information about you from any person, for the purpose of assessing your credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by us to any other party.
- 3.4 You authorise us to disclose any information obtained to any person for the purposes set out in clause 3.3.

4. PAYMENT

- 4.1 Unless specified otherwise by us in writing payment for Products and Services shall be made in full by the 20th of the month following the month of invoicing ("the due date").
- 4.2 If you do not pay the full amount invoiced by the due date for payment, then you shall pay default interest on the unpaid amount at the rate of 2.5% per month, compounding monthly, from the due date for payment until the date of actual payment in full of the unpaid amount together with any default interest accrued thereon.
- 4.3 You agree to indemnify us for any costs incurred by us arising out of, or incidental to, the enforcement or attempted enforcement of our rights under this contract, including but not limited to solicitor-client costs and/or debt collector fees, disbursements and charges.
- 4.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument becomes cleared funds by our bank.
- 4.5 A deposit may be required and if so it shall be paid immediately and is non-refundable.
- 4.6 We reserve the right, at our sole discretion, to withdraw credit facilities at any time from you.

5. QUOTATION

- 5.1 Where a quotation is given in writing by us for Products and Services:
 - 5.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 5.1.2 The quotation shall be exclusive of goods and services tax unless specified otherwise in writing;
 - 5.1.3 Prices quoted by us shall be subject to adjustment, correction or withdrawal at any time before our acceptance of your order. Unless specified to the contrary, prices quoted are "ex our premises", and freight will be charged where applicable.
 - 5.2.4 Prices quoted by us may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services between the date of the contract and delivery of the Products and Services.
- 5.2 Where Products and Services are required in addition to the quotation you agree to pay for the additional cost of such Products and Services.
- 5.3 A quotation that is not in writing on our letterhead shall not be valid and we shall not be bound by it.

6. RISK AND RESERVATION OF TITLE

- 6.1 Risk shall pass to you when the Products and Services leave our premises, even though we may arrange delivery or insurance cover.
- 6.2 Title in any Products and Services supplied by us passes to you only when you have made payment in full for all Products and Services provided by us. "Full payment" includes the whole of the price and any other sum(s) payable by you on any account whatsoever, including default interest incurred. Until full payment is made you undertake to: 1) ensure that the Products and Services will at all times be able to be identified as our property; 2) maintain the Products and Services in the same condition as they were in when supplied to you (subject to clause 6.3 below); 3) pay all proceeds to us if the Products and Services are sold to a sub-buyer; 4) notify us immediately of any change in the address at which the Products and Services are kept; 5) not grant a security interest over the Products and Services to a third party.
- 6.3 If the Products and Services are attached, fixed, or incorporated into any of your property, by way of any manufacturing or assembly process by you or any third party, title in the Products and Services shall remain with us until you have made full payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of any new Products and Services, title to the new Products and Services shall be deemed to be assigned to us as security for the full amount you owe us.
- 6.4 If you fail to comply with our terms of payment, we shall have all rights and remedies as may be available to us, whether in law or equity or otherwise howsoever arising, and we may enter upon any premises where the Products and Services are situated and take possession of such Products and Services. You shall fully indemnify us for any claim and/or demand which may be brought against us as a result of such entry and taking possession.

7. PERSONAL PROPERTY SECURITIES ACT 1999

- 7.1 We shall have a purchase money security interest in all Products and Services supplied to you until full payment has been made by you in respect of all amounts invoiced to you.
- 7.2 You give us a security interest in all of your present and after-acquired property that we have performed services on or to or in which Products and Services or materials supplied or financed by us have been attached or incorporated.
- 7.3 You acknowledge that the above clauses create security interests (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in the Products and Services. We may perfect our security interest by registering a financing statement pursuant to the PPSA. You will at our request promptly execute any documents, provide all necessary complete, accurate and up-to-date information and do anything else required by us to ensure that our security interest constitutes a perfected security interest including all information required to register a financing statement on the personal property security register.
- 7.4 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA) under s148 of the PPSA.
- 7.5 You agree that, to the extent permitted by s107 of the PPSA, you shall have no rights under, and we shall have no obligations under, the provisions of Part 9 of the PPSA. We reserve our rights under Part 9 and you further agree that where we have rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.

8. MORTGAGE

- 8.1 For any work over \$10,000 you agree that in the event of any default of the provisions of these terms and conditions and as security for all your indebtedness to us from time to time, in consideration of among other things us forbearing to sue immediately for the debt, you hereby irrevocably agree to grant us a registered mortgage over all land in New Zealand in which you have an interest on the most current Auckland District Law Society all moneys memorandum of mortgage form and acknowledge that we may lodge a caveat over all such land pending registration of such mortgage. You hereby:
 - 8.1.1 grant an irrevocable authority to us to execute such documents on your behalf as may be required to perfect and register this interest, and

- 8.1.2 agree to provide such assistance as may reasonably be required by us to execute and register such documents.

9. GENERAL LIEN

- 9.1 You agree that we may exercise a general lien against any Products and Services or property belonging to you that are in our possession for all sums outstanding under this contract and any other contract to which you and us are parties.
- 9.2 If the lien is not satisfied within seven (7) days of the due date we may, having given notice of the lien at our option, sell such Products and Services or part thereof upon such terms as we shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

10. DEFAULT

- 10.1 "Default" by you includes the following:
 - 10.1.1 Non payment of any sum by the due date.
 - 10.1.2 You intimate that you will not make full payment by the due date.
 - 10.1.3 Any Products and Services are seized by any of your other creditors or any other creditor intimates that he, she or it intends to seize Products and Services.
 - 10.1.4 Any Products and Services in your possession are materially damaged before full payment is made by you.
 - 10.1.5 You are bankrupted or insolvent or commit any act of bankruptcy or assign your estate for the benefit of your creditors and/or being a company is subject to liquidation proceedings or the threat thereof or are voluntarily wound up and/or have a receiver appointed.
 - 10.1.6 A Court judgment is entered against you and remains unsatisfied for seven (7) days.
 - 10.1.7 Any material adverse change in your financial position.
 - 10.1.8 Any other breach of these terms and conditions or any agreement you have with us.
- 10.2 If you are in default we may cancel any agreement you have with us without prejudice to our rights and remedies under that agreement and these terms and conditions and any security interest held by us shall become immediately enforceable.
- 10.3 If you default then you agree that Products and Services fixed to your land give us a legal or equitable interest in your land which entitles us to enter a caveat against your land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.

11. DELIVERY

- 11.1 We will do our best to comply with any delivery date agreed with you but shall not be liable for any loss resulting from late delivery of Products and Services or for loss or damage to Products and Services after dispatch from our premises. Delivery is deemed to be complete when the Products and Services have been uplifted by you or your agent or our carrier.
- 11.2 If we are prevented from or are delayed in fulfilling our obligations to you as a direct or indirect result of something out of our control, we may terminate our agreement with you by giving you written notice of such termination.

12. INSURANCE

- 12.1 Insurance for Products and Services during delivery within NZ is your responsibility, even if we arrange the carrier on your behalf. Insurance for all export shipments is automatically included where we arrange export freight by us on your behalf. This insurance will be on-charged to you.

13. LIABILITY

- 13.1 In respect of any implied warranties, conditions or terms imposed on us by law, our liability shall, where it is allowed, be limited to the amount appearing in the relevant invoice.
- 13.2 Notwithstanding anything else expressed or implied in these terms and except where a statute requires otherwise, we shall not be liable whether in contract, tort or otherwise for:
 - 13.2.1 any injury to persons or damage to property; or
 - 13.2.2 any direct, indirect, consequential, financial or economic loss or damage to property; arising out of any act or omission by us.
- 13.3 You shall fully indemnify us for any claim and/or demand which may be brought against us, whether caused or arising as a result of our negligence or otherwise, brought by any person in connection with the Products and Services.
- 13.4 We shall not be liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our control.

14. WARRANTY

- 14.1 No warranties expressed or implied in law, trade, custom or otherwise and no representations, descriptions, conditions or statements are binding on us unless set out in these terms or unless contracting out is prohibited by law.
- 14.2 Any written warranty that we provide to you will also form part of these terms and conditions of trade.
- 14.3 A warranty that is not in writing on our letterhead shall not be valid and we shall not be bound by it.
- 14.4 We give no undertaking or warranty that the Products or Services supplied are fit or suited for any particular purpose unless expressly stated in writing by us.

15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire or hold yourself out as acquiring the Products and Services for the purposes of a business.

16. PERSONAL GUARANTEE

- 16.1 If you are a registered company, trust or other organisation, then in consideration for us supplying or agreeing to supply Products and Services to you on credit in accordance with and subject to these terms and conditions, each director of the company, trustee of the trust or principal of the organisation (as the case may be) and anyone who signs these terms and conditions and/or our credit application form on behalf of you, also signs this contract in their personal capacity and hereby personally undertakes as principal debtors to us, and guarantees, the due and punctual payment of all monies and performance and observance by you of all terms, conditions and obligations to us, whether contained in these terms and conditions or at law or otherwise and indemnifies us against non-payment by you.
- 16.2 Any personal liability of a signatory hereto shall not exclude you in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and you shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

17. AUTHORITY TO ENTER CONTRACT

- 17.1 Each signatory to our credit application form and/or these terms and conditions warrants that he, she or it has the power and authority to bind you to any agreement with us and to these terms and conditions.

18. AGENCY

- 18.1 You authorise us to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 18.2 Where we enter into a contract of the type referred to in clause 18.1 it shall be read with and form part of this agreement and you agree to pay all and any amounts due under that contract.

19. RETURNS

- 19.1 Only if we agree with you, at our sole discretion, that you shall have a right to return any Products and Services, then:
 - 19.1.1 All Products and Services returned are subject to a 10% handling charge.
 - 19.1.2 Returns will not be accepted after seven days from the date of purchase.
 - 19.1.3 All Products and Services returned must be in the same condition as when delivered to you and must be accompanied by an invoice.
 - 19.1.4 Delivery costs will not be refunded to you and freight charges must be prepaid on Products and Services being returned.
- 19.2 Procured Products and Services are NON RETURNABLE.

20. CANCELLATION

- 20.1 An order for Products and Services may not be cancelled by you without our written consent. You shall reimburse us for materials, labour and other incidental expenses incurred before the order was cancelled.

21. MISCELLANEOUS

- 21.1 Failure by us to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.
- 21.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.