

## Terms of Trade

### 1. Definitions

- 1.1 "Plumber" shall mean Masters Plumbing Ltd, or any agents, employees, successors or assigns thereof.
- 1.2 "Owner" shall mean the entity or person named on any form provided by the Owner to the Plumber (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy works (which includes materials to complete the works). If the Owner includes two or more persons, those persons' liability is joint and several.

### 2. General

- 2.1 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Plumber.
- 2.2 The Plumber may sub-contract any part of this contract. No-subcontractor has any authority to agree to any variation of this contract on behalf of the Plumber.
- 2.3 Any instructions received by the Plumber from the Owner for the supply of works shall constitute acceptance of this contract.
- 2.4 The Plumber may submit a detailed payment claim at intervals not less than one (1) week for work performed up to the end of each week.
- 2.5 To end the contract, the Owner must give the Plumber a signed notice giving the details of why the contract is being ended. The Plumber is entitled to a reasonable price for any works completed, and materials ordered but not installed, as at the date the contract is ended.
- 2.6 Where a quotation is given then it shall only be binding for thirty (30) days from the date of issue, and where additional works are required the Buyer agrees to pay the additional price of such works.

### 3. Default

- 3.1 Without prejudice to any other rights or remedies that the Plumber may have against the Owner, the Owner agrees that in the event of default in payment by the Owner then the Owner agrees to pay on demand;
  - a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Plumber in recovering any amounts payable by the Owner to the Plumber; and
  - b) interest on the amount outstanding at the end of each month in which the Owners account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and
  - c) a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Owners account is in default.

### 4. Privacy Act

- 4.1 The Owner acknowledges that personal information collected or held by the Plumber is provided and may be held, used and disclosed for the purpose enabling the Plumber to notify any credit agency of default on any obligation of the Owner to the Plumber and enabling the Plumber to provide such personal information to any credit agency so such credit agency can maintain correct accounting records.

### 5. Completion

- 5.1 The works shall be deemed to be completed when (subject to clause 5.3) either (in the Plumber's sole opinion) the works have been completed in accordance with the plans and specifications, or the Owner is given notice of practical completion, or a certificate of completion has been produced.
- 5.2 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.
- 5.3 Any claim by the Owner as to incorrect performance or breach of this contract must be made to the Plumber in writing within seven (7) days of completion (time being of the essence) of the works otherwise the Plumber shall be entitled to presume that the works have been delivered in good order and without defect or shortage in quantity.

### 6. Limitation of Liabilities

- 6.1 If the Plumber is ever liable to the Owner, or any other person, and the Plumber cannot rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then the Plumber's liability is in all cases limited to the price.

### 7. Construction Contracts Act 2002

- 7.1 In the event that the Owner is a residential occupier as defined by the Construction Contracts Act 2002 the Owner hereby expressly acknowledges that:
  - a) 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 Owner, and the payment is not paid in full by the due date for payment and no payment schedule has been given by the Owner, or a scheduled amount stated in a payment schedule issued by the Owner in relation to the payment claim is not paid in full by the due date for its payment, or the Owner has not complied with an adjudicator's notice that the Owner must pay an amount to the Plumber by a particular date, and the Plumber has given written notice to the Owner 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 Owner or by any person claiming through the Owner; 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 Contractual Remedies Act 1979; or enable the Owner to exercise any rights that may otherwise have been available to the Owner under that Act as a direct consequence of the Plumber suspending work under this provision.

### 8. Caveat and Mortgage

- 8.1 The Owner agrees that the Plumber shall have the right to complete and register a mortgage over any property owned by the Owner to secure any amount outstanding and that the Plumber shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Owner hereby irrevocably appoints the Plumber as the attorney of the Owner for the purpose of the Plumber exercising its rights under this clause whilst any amount remains in default.
- 8.2 Should the Plumber elect to proceed in any manner in accordance with clause 8.1, the Owner 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.