

## Central Plumbing (Wellington) Limited

### TERMS OF TRADE

The terms of trade set out below govern all supplies of goods and services from Central Plumbing (Wellington) Limited ("Central Plumbing (Wellington)", "we", "us") to the Customer ("you"). They are effective from 1 May 2016 and will replace all earlier terms of trade between you and us, and the terms of any document used by you and purporting to have contractual effect. Your acceptance of any goods or services from us indicates your acceptance of the terms of trade below.

#### 1. Delivery and risk

- 1.1. You are responsible for insurance and risk in the goods from the earlier of when a carrier receives them for delivery to you, or when you or your agent receive them.
- 1.2. You agree to pay all delivery costs. If we deliver any order in parts, each delivery is a separate contract.
- 1.3. You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent.
- 1.4. All claims for shortage or delivery damage must be made to the carrier and to us within 3 business days after the date of delivery.
- 1.5. We will make every effort to ensure goods are delivered or services performed on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance, no matter how that delay was caused.

#### 2. Quotations, Orders and Prices

- 2.1. Unless we agree otherwise in writing, all prices other than quoted prices are subject to alteration without notice.
- 2.2. Quoted prices are held for 28 days only. After that, we may increase the price to reflect any increase in costs. If any price is labelled in a quotation as 'estimate only' (e.g. a cost for materials), the price charged will be the actual cost on the date of supply.
- 2.3. You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 2.4. Our minimum labour charge is for a half hour. After that we charge per quarter hour or part thereof.
- 2.5. You must confirm orders in writing. You agree to pay for all costs of variations requested by you.
- 2.6. Where we require a payment in advance (e.g. for the purchase of materials), we will not confirm your order until we receive that payment.
- 2.7. Orders may be cancelled only if you give written notice to us and we agree in writing to the cancellation. We may charge you for costs (including materials, freight, handling fees and labour) that have been incurred up to the date on which we agree to accept your cancellation.

#### 3. Compliance with samples and specifications

- 3.1. Some products we supply may vary in colour, texture, or appearance. You agree to accept the goods subject to these variations, provided they are within normal industry practice and standards.
- 3.2. If you have any tight finish quality limits, you must advise us and agree on the finish quality standard for the job before work commences. If we are not the contractor completing installation for you, you must notify us of any concern about finish quality standards before goods have been installed or fixed

to a building, or we may require you to pay for the cost of removing and re-fixing goods if that is necessary.

- 3.3. Where you specify the design, construction, shape or other property of goods, you warrant that you have the right, including copyright and other intellectual property rights, to ask us to make goods to that specification, and you agree to indemnify us against all costs, losses, damages and expenses and claims which may arise as a result of our using that specification.
- 3.4. Any information we supply to you that relates to materials, specifications, standards and codes is provided for your assistance only. It is entirely your responsibility to ensure that your project complies with New Zealand law including the Building Act 2004, its regulations and codes, relevant New Zealand standards, and territorial local authority codes at all times.
- 3.5. Where you provide measurements and specifications for goods and we supply goods to those measurements or specifications, we will not be liable to you for any failure of the goods to be suitable for your job.

#### **4. Access for Installation (if applicable)**

- 4.1. For the purposes of installation, you will provide at no cost to us all necessary power, lighting, unloading, hoisting and lifting facilities, labour, site preparation and employee amenities. These must comply with all legal requirements.
- 4.2. We will be responsible for our actions in terms of the Health and Safety at Work Act 2015. You will be responsible for compliance with that Act in respect of your premises and you must advise us before commencement of our work of any hazards on your premises.

#### **5. Payments and property**

- 5.1. Unless we have agreed in writing to extend credit to you in another manner, you must pay for all goods in full before delivery or collection.
- 5.2. Where we have agreed to extend credit to you, you must pay in full, without deduction or setoff, within 7 days after the date of our invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 5.3. If you have not paid in full by the due date, we may charge a penalty equal to 20% of the unpaid amount to cover our costs of processing the default, and charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bank. We may also charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid. Our debt collection agent may enforce this clause under the Contracts (Privity) Act 1982.
- 5.4. Payments that you make to us will be applied first to any amount owing in respect of service work, then to payment for any goods that have been purchased as inventory and you have sold, then to payment for goods supplied by us which you have not sold.
- 5.5. Property and ownership in any goods we supply, whether in their original form or incorporated in or attached to another product, will not pass to you but will remain with us until we receive payment in full of the purchase price of the goods and all other amounts that you owe to us for any reason.
- 5.6. Until property passes to you, you shall hold any goods as fiduciary bailee for us, and store them so they can be identified and cross referenced to particular invoices.
- 5.7. Unless otherwise notified in writing, where goods are sold to you as inventory for resupply, you are authorised to sell the goods in the ordinary course of your business, but you must keep the proceeds of any goods sold in a separate account in trust for us.

- 5.8. You must not resell or part with possession of any goods that we supply for your own use before you have paid for them in full, unless we have given you written consent.
- 5.9. Notwithstanding clauses 5.1 and 5.2 above, all payments shall immediately become due to us if you refuse to accept delivery of any goods without reasonable cause, if we reasonably believe that the information you have given us in your application for credit is not correct or no longer correct, and you have failed to give us correct information within 5 days of our request, if, without our consent, you sell or otherwise dispose of any equipment that you have not paid us for, if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 5, or if you make or attempt to make an arrangement or composition with creditors.
- 5.10. Where we reasonably believe that any collateral is at risk or that you are or will be in breach of any part of clauses 3 or 4 of this agreement, we or our agent may enter your premises without further notice to you or any other person, to remove any goods that are our property, including goods that are installed in, affixed to or attached to other goods, and you indemnify us against all costs and claims in respect of our exercise of rights under this clause 5.10.

## **6. Security interests**

- 6.1. If we extend credit to you or if you owe us money for any reason, you agree to grant us a security interest in the goods we have supplied to you, whether or not they have become accessions to other goods or processed or commingled into other goods. You agree to do everything necessary and provide to us on request all information we require to register a financing statement over the goods and their proceeds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement. The goods and services subject to the security interest will be described in our invoices.
- 6.2. You agree that you will supply us, within 2 business days of our written request, with copies of all security interests registered over your personal property, and you authorise us as your agent to request information from any secured party relating to any security interest in any personal property that is or has been in your possession or control.
- 6.3. You agree to pay on demand all our reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not you initiated the change.
- 6.4. If we repossess goods under this agreement, we may retain those goods or dispose of them without notice or statement of account to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums you owe us. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or provide you with a statement of account.
- 6.5. You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

## **7. Goods supplied by you**

- 7.1. If you supply any items to us for repairs, and if any payment is overdue, we may hold those items under a lien until you pay us in full.
- 7.2. If you supply any goods for us to install, it is entirely your responsibility to check that the goods are suitable for your needs. If they are not suitable and after installation the result is unsatisfactory, you must still pay our fee.

## **8. Central Plumbing (Wellington) Warranties**

- 8.1. Where the Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.

- 8.2. Any warranty may be voided by damage to or misuse of goods, negligent installation or operation, installation in damp or mouldy conditions, the use of goods for non-specified purposes, inadequate or inappropriate packaging, cleaning or maintenance, unauthorised repairs, modifications or the use of fixings or fittings not authorised by us.
- 8.3. You will not be entitled to the benefit of any warranty if any sum that you owe us for any reason is overdue.
- 8.4. If the goods or services you acquire from us are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these terms of trade.

## **9. Limitation of liability**

- 9.1. We will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, electricity or gas shortage, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond our reasonable control. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause.
- 9.2. Subject to clause 9.1, our liability will be limited to the amount paid or payable by you for any faulty goods or services supplied, and neither we, our employees, contractors and agents, any manufacturer(s) or developer of the goods or any of their materials or components, or any suppliers of services, will be liable to you for loss or damage of any kind, no matter how that loss or damage is caused or arises. This limitation of liability includes, but is not limited to, costs (including costs of returning goods to us or to any manufacturer), consequential loss, loss of contracts, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods.

## **10. Intellectual property rights**

- 10.1. Neither we nor our suppliers transfer any right, title or interest in any copyright, trade marks, or other intellectual property rights relating to any of the goods, or the processes by which they are applied, to you.
- 10.2. You must not use our intellectual property, including trademarks, or cause, assist or permit anything to occur that may interfere with or damage our intellectual property rights.
- 10.3. You must advise us immediately if you become aware of any unauthorised use of our trademarks or other intellectual property rights.
- 10.4. All information you acquire from us regarding our processes and procedures, business practices, prices, pricing structures, discounts is confidential to us and you must not disclose it to any person without our written consent.

## **11. Personal Information**

- 11.1. We will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.
- 11.2. You authorise any person or company to provide us with any information it may require in response to your application for credit and/or other enquiries.

**12. General Conditions**

- 12.1. Our terms of trade include all technical schedules and operating procedures that we advise to you from time to time, including on our website. If there is any conflict between these terms and the schedules, these terms will prevail.
- 12.2. We reserve the right to change these terms of trade from time to time by notice to you in writing.
- 12.3. If we fail to enforce any terms or to exercise our rights under these terms of trade at any time, we have not waived those rights.
- 12.4. If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions will remain in full force and effect, and you and we will adjust our respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- 12.5. Any agreement between you and us is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although we reserve the right to commence any proceedings against you in any other court.

Signed for Customer

\_\_\_\_\_  
Signature

Date: \_\_\_ / \_\_\_ / 20\_\_

\_\_\_\_\_  
Position

\_\_\_\_\_  
Customer name