

TERMS OF TRADE

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These Terms of Trade apply to all Materials and Works that we supply to you.

At Marbeck Plumbing Waiheke Limited T/A Marbeck Plumbing ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- have set out a 'Dictionary' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- have included summaries / outlines for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

PART A: OVERVIEW OF THESE TERMS

1. Introduction

- 1.1 These Terms set out all of the terms and conditions that apply to Materials and Works that we supply to you.
- 1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- 1.3 We may update these Terms on notice to you in writing. Our updated Terms will apply to all Works you order after we have notified you that we have updated our Terms.

PART B: MATERIALS AND WORKS

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

2. Order process

- 2.1 You may order Materials and Works from us in accordance with our order processes that we advise to you at any time.
- 2.2 All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Materials and Works, delivering the Materials and Works or otherwise confirming the order in writing.
- 2.3 We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- 2.4 You may request variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, in accordance with our process for variations that we advise to you.
- 2.5 We may require variations to the Order as a result of unforeseen circumstances discovered before or during the provision of the Works which are beyond our control. These variations will be submitted to you for approval, and you shall be required to respond to any variation submitted by us within 10 Business Days. Failure to do so will entitle us to add the cost of the variation to the Order. Payment for all variations must be made in full at the time of their completion.

3. Delivery of Materials and Supply of Works

- 3.1 We will use reasonable efforts to deliver Materials and provide Works on the Delivery Date specified in the relevant Order. However, unless expressly agreed otherwise, the Delivery Date is indicative only.
- 3.2 We will deliver the Materials and provide the Works at the delivery location set out in the relevant Order or any other location agreed with you in writing.
- 3.3 Subject to clause 17, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to deliver the Materials and perform the Works. We shall not be liable for any loss or damage to the worksite unless due to our negligence.

4. Supply of Materials

- 4.1 Clauses 4 and 5 applies if your Order relates to Materials.
- 4.2 We may deliver Orders in instalments (unless agreed otherwise).
- 4.3 If you delay, fail or refuse to accept delivery of Materials, the Materials will be treated as delivered when we were willing and able to deliver the Materials. Without affecting any other rights we may have, we may charge you for any reasonable expenses or additional costs incurred by us as a result of the delay, failure or refusal to accept delivery (including storage).
- 4.4 Risk in the Materials passes to you on delivery.
- 4.5 If you request that we leave the Materials outside our premises for collection or to deliver the Materials to an unattended location, then the Materials shall be left at your sole risk. In the event that the Materials are lost, damaged or destroyed then replacement of the Materials shall be at your expense.

- 4.6 You are responsible for ensuring that any instructions, recommended uses, applications and installation methods are followed for Materials and any cautions and/or warnings are observed.

5. Defects

- 5.1 You must inspect the Materials on the date of delivery and notify us of any alleged defect or damage or incorrect products or quantity (Defects). Upon request, you must allow us to inspect, or return to us, any defective or damaged Materials. You should notify us of any alleged Defects as soon as possible if any to enable us to confirm that any Defects occurred before delivery to you.
- 5.2 If there are any Defects in an order, the remedies set out in clause 27.1 will apply.

6. Return of non-defective Materials

- 6.1 We may at our absolute discretion accept non-defective Materials for return in which case we may require you to pay up to 10% of the value of the Materials plus any freight costs.

7. Second-hand Materials

- 7.1 For second hand Materials agreed by you, you accept the Materials with all faults and agree that no warranty is given by us as to the quality or suitability for any purpose and any implied warranty,

statutory or otherwise, is expressly excluded. We shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

8. Cancellation

- 8.1 Either party may cancel an Order by written notice if the other party:
 - commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - suffers an Insolvency Event.
- 8.2 If we are unable to deliver any Materials or Works to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Materials and/or Works. We will not be liable for any loss or damage arising from such cancellation.
- 8.3 You may cancel delivery of the Materials and/or Works by written notice served within 24 hours of placement of the Order.
- 8.4 We will not accept cancellation of any Order for Materials made to your specifications, or for non-stocklist items after the Order has been accepted by us.

PART C: PRICE

Part C sets out terms relating to the Price for the Materials and Works.

9. Price

- 9.1 The Price for Materials and Works will be:
 - calculated in accordance with our current price list as at the date you submit the relevant Order; or
 - the Price that we have quoted for the Materials and Works (subject to clause 9.4).
- 9.2 Unless otherwise stated, the Price does not include GST.
- 9.3 We may charge you for freight, insurance, installation, disbursements and any applicable taxes, duties and levies, in addition to the Price.
- 9.4 Where we provide a quotation, proposal or estimate:
 - unless otherwise specified, the quotation, proposal or estimate is valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
 - we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
 - the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 9.3.

PART D: PAYMENT TERMS

Under these Terms, we may supply Materials and Works to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

10. Payment

- 10.1 You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.
- 10.2 Payment shall be:
 - on completion of the Works; or
 - by way of instalments/progress payments in accordance with the Order; or
 - 20 days the month following; or
 - no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
 in full without deduction, withholding, set-off or counterclaim.
- 10.3 Payment of the Price may be subject to retention by you of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Retention Money must be held on trust by you, as trustee, for our benefit and you 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 is to be dealt with in accordance with the provisions of the Construction Contracts (Retention Money) Amendment Act 2023 and as such no Retention Money shall be used other than to remedy defects in the performance of our obligations under the contract.
- 10.4 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice.
- 10.5 If you have any dispute relating to an invoice issued by us, you:
 - must notify us of that dispute in writing within 30 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
 - will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.
- 10.6 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.

11. Credit terms and repayment obligations

- 11.1 The supply of Materials and Works to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 20.2).
- 11.2 You must notify us immediately:
 - if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or
 - if you are a company and there is a material change in your effective management or ownership.

12. Deposit and guarantee

- 12.1 We may require that you pay us in advance, or pay a deposit, or provide a guarantee, before we supply Materials or Works, as security for any Amount Owing.

13. Rights to recover Materials

- 13.1 We retain ownership of all Materials that we supply you until we have received payment in full of the Amount Owing.
- 13.2 You may resell or use any Materials in the ordinary course of your business before ownership of the Materials has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owing.
- 13.3 If any Amount Owing is overdue or if an Insolvency Event occurs, you must return Materials to us on request, or permit us to enter any premises where Materials may be stored to repossess those Materials.

14. Late payments

- 14.1 If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the due date, we may:
 - suspend, or cancel (in accordance with clause 8.1(a)), the provision of any or all Materials and Works to you;
 - cancel any rebates or discounts (whether or not previously credited); and
 - charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily

- and charged monthly.
- 15. Costs of recovering Amounts Owning**
 15.1 You must reimburse us for any costs and expenses we incur to recover any Amount Owning, or exercise our rights to recover Materials, including any debt collection fees or commission and full legal expenses.
- 16. Security interests**
 16.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Materials and the proceeds of any Materials (in accordance with clause 13) (**Security Interest**), to secure the payment by you to us of the Amount Owning.
 16.2 You undertake to promptly sign any further documents which you may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement).
 16.3 The parties agree to contract out of the provisions of the PPSA as set out in section 107 of the PPSA to the extent permitted by law and you waive your rights to receive a verification statement relating to any Security Interest. Where you have rights in addition to Part 9 of the PPSA, those rights will continue to apply.
 16.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Materials or Works to you.

PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy and confidentiality.

- 17. Health and safety**
 17.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
 17.2 You must notify us of any known hazards arising from your premises to which a work or any person may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.
 17.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Materials and/or Works (including in connection with the delivery of the Materials and/or Works).
- 18. Compliance with laws in respect of the Materials and Works**
 18.1 Both parties acknowledge and agree:
 (a) to comply with the Building Act 2004 (including any subsequent Amendments) and Code of Ethics, in respect of all workmanship and building products to be supplied during the course of the Works; and
 (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 19. Materials supplied by you**
 19.1 Where you have supplied products for us to complete the Works, you acknowledge and accept responsibility for the suitability of purpose and use for your products and the intended use and any faults inherent in those products. However, if it is in our opinion, it is believed that the products supplied are non-conforming products and will not conform with New Zealand regulations, then we shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 9.
- 20. Privacy**
 20.1 We may collect, use and share Personal Information:
 (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
 (b) in accordance with the Privacy Act 2020.
 This may include sharing Personal Information with our Related Companies.
 20.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
 20.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 20. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
 20.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.
- 21. Confidentiality**
 21.1 Each party must keep confidential all Confidential Information.
 21.2 Nothing in clause 21.1 prevents a party from disclosing Confidential Information if disclosure is:
 (a) required by law, or Regulator (but only to the extent required);
 (b) is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
 (c) to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.
 21.3 We may also use any information that we collect in connection with the Materials and Works, in accordance with applicable law, to improve our Materials and Works, for statistical and research purposes, and for general information purposes including to provide industry and market insights. You grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information for this purpose. Any information that we disclose or publish will be in a fully aggregated and de-identified form (to ensure that it does not identify any individuals and your information remains confidential).

PART F: SUSPENSION OF WORKS, DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the maximum liability and exclusions set out in this Part F.

- 22. Suspension of Works**
 22.1 Where the contract is subject to section 24A of the Construction Contracts Act 2002, you hereby expressly acknowledge that:
 (a) we have the right to suspend work within 5 Business Days of written notice of its intent to do so if a payment claim is served on you, and:
 (i) the payment is not paid in full by the due date for payment in accordance with clause 10 and/or any subsequent amendments or new legislation and no payment schedule has been given by you; or
 (ii) a scheduled amount stated in a payment schedule issued by you in relation to the payment claim is not paid in full by the due date for its payment; or
 (iii) you have not complied with an adjudicator's notice that you must pay an amount to us by a particular date; and
 (iv) we have given written notice to you of our intention to suspend the carrying out of construction work under the construction contract.
 (b) if we suspend work, we:
 (i) are not in breach of contract; and
 (ii) are not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by you or by any person claiming through you; and
 (iii) are entitled to an extension of time to complete the contract; and
 (iv) keep our 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 we exercise the right to suspend work, the exercise of that right does not:
 (i) affect any rights that would otherwise have been available to us under the Contract and Commercial Law Act 2017; or

- (ii) enable you to exercise any rights that may otherwise have been available to you under that Act as a direct consequence of us suspending work under this provision.
- (d) due to any act or omission by you, you effectively preclude us from continuing the Works or performing or complying with our obligations under this contract, then without prejudice to our other rights and remedies, we may suspend the Works immediately after serving on you 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 us as a result of such suspension and commencement shall be payable by the you as if they were a variation.
- 22.2 If pursuant to any right conferred by this contract, we suspend the Works and the default that led to that suspension continues un-remedied subject to clause 8.1 for at least 10 Business Days, the Supplier shall be entitled to terminate the contract, in accordance with clause 8.
- 23. Dispute Resolution**
 23.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).
 23.2 Following receipt of a Dispute Notice:
 (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
 (b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
 (c) if the dispute is not resolved by our respective Representatives in accordance with clause 23.2(b), then either party may commence court proceedings.
 23.3 This clause 23 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 23.
 23.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.
- 24. Consumer Guarantees Act and Fair Trading Act**
 24.1 If the Materials and Works include any Consumer goods or services, nothing in these Terms will affect any rights you may have as a consumer under the Consumers Guarantees Act 1993 (**CGA**) and the Fair Trading Act 1986 (**FTA**).
 24.2 If you are acquiring, or hold yourself out as acquiring, the Materials and Works in trade, to the extent permitted by law:
 (a) for the purposes of section 5D of the FTA, the parties are contracting out of sections 9, 12A, 13 and 14(1) of the FTA;
 (b) you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by these Terms); and
 (c) it is fair and reasonable for the parties to be bound by this clause 24.2.
 24.3 If you are acquiring any Materials for the purpose of resupply in trade, you undertake that you will:
 (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
 (b) procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
 You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 24.3.
- 25. Warranties**
 25.1 We warrant that all Materials and Works are free from material defects in materials and workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by:
 (a) any fault or defect in our Materials or Works resulting from any of your (or your Representatives) act or omissions (outside of the ordinary use of the Materials or Works); or
 (b) minor deviations in specification, measurements, colour, weight, size or strength of the Materials.
 25.2 To the fullest extent permitted by law (including as set out in clause 24.1), except as expressly set out in these Terms, we expressly exclude all warranties, representations, descriptions, statements, terms or conditions (whether express or implied) whether under statute, law, trade, custom or otherwise that would (but for this clause) apply to the Materials and Works, including all warranties relating to the suitability for resale, quality, or fitness for any particular purpose, of our Materials.
- 26. Third party suppliers**
 26.1 If you request and authorise us to arrange the provision of Materials or Works directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Works in arranging such supply, provided that we exclude all liability in connection with the supply of Materials and Works to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.
- 27. Limitation of liability**
 27.1 To the extent permitted by law, our total liability under or in connection with these Terms and the Materials and Works is limited to, at our option:
 (a) in the case of Materials, any one or more of the following:
 (i) the replacement of the Materials; or
 (ii) the supply of equivalent products;
 (iii) the repair of the Materials;
 (iv) the payment of the cost of replacing the Materials or of acquiring equivalent products; or
 (v) the payment of the cost of having the Materials repaired.
 (b) in the case of Works:
 (i) supplying the Works again; or
 (ii) the payment of the cost of having the Works supplied again.
- 27.2 If we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
 (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Materials and/or Works;
 (b) we will not be liable for any:
 (i) indirect, special or consequential loss or damage whatsoever; or
 (ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 27.3 The limitations and exclusions on liability in this clause 27 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.
 27.4 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
 (a) for the acts or omissions of your Representatives or any third party;
 (b) for any act or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
 (c) to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

- 28. General**
 28.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the Auckland Courts of New Zealand.
 28.2 **Previous Agreements:** These Terms constitute the entire agreement of the parties about its subject matter and supersedes any previous written agreements and written representations.
 28.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
 28.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse

- effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owed by you to us.
- 28.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 28.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 28.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 28.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 28.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 28.10 **Relationship:** We will provide Materials and Works to you as an independent service provider. Nothing in these Terms creates any partnership, joint venture or employment relationship between the parties.
- 28.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Materials and Works to, or you purchasing any product or services from, any other person.
- 28.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

29. Definitions

Amount Owed means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 9.3, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owed by you.

Business Day means Monday to Friday, excluding public holidays in New Zealand.

Confidential Information means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Materials and Works (as applicable) but excludes information which is:

- in the public domain, other than as a result of a breach of these Terms;
- in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
- is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.

Consumer has the meaning given to that term in the Consumers Guarantees Act 1993.

Delivery Date means the date for delivery of the Materials and/or Works, as specified in the Order.

Insolvency Event means, in relation to a party, any step is taken toward any of the following steps, or any of the following steps has occurred:

- the primary, or all, of its business activities being suspended or ceasing;
- the presentation of an application for its liquidation;
- the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- the appointment of a liquidator, receiver, statutory manager, or similar official;
- the suspension or threatened suspension of the payment of its debts;
- the enforcement of any security against the whole or a substantial part of its assets;
- if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
- any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,

in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

Materials means any Materials (and associated Works) supplied by us to you at any time, including the Materials specified in an Order.

Order means an Order for Materials or Works that you submit to us and we approve, in accordance with clause 2.2.

Personal Information has the meaning given to that term in the Privacy Act 2020.

PPSA means the Personal Property Securities Act 1999.

Price means the Price payable, in accordance with clause 9.1.

Regulator means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Materials and/or Works.

Related Company has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.

Representatives means directors, officers, employees, agents and contractors of the relevant party.

Specific Terms means the terms (if any) that are included in Part I to these Terms.

Terms means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).

We or us means the supplier of Materials and Works, Marbeck Plumbing Waiheke Limited T/A Marbeck Plumbing.

Works means any Works supplied by us to you at any time, including the Works specified in an Order.

You or your means the customer purchasing Materials and Works from us.

30. Interpretation

In these Terms, unless the context otherwise requires:

- headings are for convenience only and do not affect interpretation;
- a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
- a reference to "in writing" includes by email;
- the words "include" or "including", or similar expressions, are to be construed without limitation;
- a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

Part I details additional specific terms that apply to your order of the Materials and Works.

31. Additional charges

31.1 You acknowledge and agree that:

- our normal hours of business are from 7:00am to 5:00pm Monday to Friday. In the event that you request us to provide the Works urgently, that may require our staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then we reserve the right to charge you additional labour costs (penalty rates will apply at time and a half normal rates) and travel time, unless otherwise agreed between both parties;
- if we have been requested by you to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to you irrespective of whether or not the repair goes ahead; and

(c) we reserve the right to vary the Price in the event of:

- increases to us in the cost of fuel, labour or Materials which are beyond our control; or
- where additional Works are required as result of unforeseen circumstances including, but not limited to, changes to the scope of Works, incorrect plans or specifications provided by you, the substrate being unsuitable or obscured worksite defects not visible at the time of inspection. Any variations to the Price will be dealt with in accordance with the provisions of clause 2.5.

32. Information we provide

32.1 Any advice, recommendation, information or assistance provided by us in relation to the Materials and Works supplied is given in good faith to you, or your agent and is based on our own knowledge and experience and shall be accepted without liability on our part. Where such advice or recommendations are not acted upon then we shall require you or your agent to authorise commencement of the Works in writing. We shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. Accordingly, we offer no warranty in regard to the aforementioned.

33. Information we require

33.1 You acknowledge and agree that we shall be entitled to rely on the accuracy of any plans, specifications and other information provided by you. In the event that any of this information provided by you is inaccurate, we accept no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

33.2 You warrant that any structures, existing plumbing, gasfitting and/or associated services 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 and are compliant with regulations. 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 we, or our employees, reasonably form the opinion that your premises is not safe for the Works to proceed and/or the current positioning of the unit is illegal due to not meeting the required clearances then you 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. We shall be entitled to delay the provision of the Works until we are satisfied that it is safe for the installation to proceed.

34. Your acknowledgements

34.1 You acknowledge and agree that:

- the installation of some appliances can cause water hammer or damage to existing pipe work. You agree to indemnify us against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials;
- choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Blockages also occur due to disposal of sanitary hygiene products and foreign objects in sewer lines. Once cleared, we cannot give any guarantee against recurrence or further damage. In the event that you request us to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and we do not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, we may require you or your agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, you shall be responsible for the cost of repair, replacement and/or retrieval of said equipment;
- where we have performed temporary repairs that we:
 - offer no guarantee against the recurrence of the initial fault, or any further damage caused; and
 - will immediately advise you of the fault and shall provide you with an estimate for the full repair required.
- we are only responsible for components that are replaced by us and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and
- under no circumstances, will we handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the worksite:
 - we shall suspend the Works;
 - you shall be fully responsible for the resolution of any resulting problems; and
 - any additional cost incurred by us shall be added to the Price.

35. Specifications of Materials

35.1 You acknowledge and accept that:

- where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims or drainage components used due to the difference in metal alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials; and
- Materials supplied may:
 - fade or change colour over time;
 - expand, contract or distort as a result of exposure to heat, cold, weather;
 - mark or stain if exposed to certain substances;
 - be damaged or disfigured by impact or scratching; and
 - create undesirable smells caused by a system as a result of its normal operation.

35.2 We will make every effort to match batches of product supplied and to match new Materials to existing items in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

36. Testing of the Worksite

36.1 Prior to commencement of any Works, we shall carry a routine soundness test of the worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery, we, where necessary, will have the gas supply capped-off until the fault is found and repaired at your expense.

36.2 You acknowledge and agree that in instances where the gas supply is turned off at the meter or bottles by us in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by you.

37. Worksite requirements

37.1 You acknowledge and agree that in the event we require access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated worksite, that is not owned by you, then it is your responsibility to gain permission from the landowner to use the above-mentioned property throughout the process or delivering the works. In the event the landowner denies access or use of the land or property, you shall be liable for all costs incurred by us in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

37.2 All rubbish generated by us will be placed in a designated area appointed by you but the removal of same shall be your responsibility or that of your Representative, unless otherwise agreed.

37.3 You acknowledge and agree that it is your responsibility to provide us, while at the worksite, with adequate access to available water, electricity, toilet and washing facilities as may be required.

37.4 Where we require that Materials, tools etc. required for the Works be stored at the worksite, you shall supply us a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be your responsibility.

38. Underground Locations

38.1 Prior to us commencing any work you must advise us of the precise location of all underground services on the worksite and clearly mark the same. The underground mains and services you 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 worksite.

38.2 Whilst we will take all care to avoid damage to any underground services you agree to indemnify us 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 clause 38.1.

39. Insurance

39.1 We shall during the course of the Works, if applicable, have and maintain the relevant insurance necessary. It is your responsibility to ensure that you are similarly insured.