

BURNS PLUMBING & GAS LIMITED

TERMS OF TRADE

1 DEFINITIONS

- 1.1 **"After Hours"** means weekends, public holidays and after 5pm and before 7am Monday to Friday.
- 1.2 **"Company"** means Burns Plumbing & Gas Limited, its successors and assigns or any person acting on behalf of and with authority of Burns Plumbing & Gas Limited.
- 1.3 **"Customer"** means the person, company or entity purchasing the Services and/or Materials supplied by the Company and includes their agent.
- 1.4 **"GST"** means Goods and Services Tax arising pursuant to the Goods and Services Act 1985.
- 1.5 **"Materials"** means goods that are sold by the Company to the Customer in the course of providing the Services or otherwise sold to the Customer.
- 1.6 **"Price"** means the cost of the Services and/or Materials as determined in accordance with clause 4.
- 1.7 **"Quote"** means an estimate that may be provided by the Company to the Customer for the Services and/or Material.
- 1.8 **"Services"** means plumbing, gasfitting, and any related services provided by the Company to the Customer.
- 1.9 **"Terms"** means these terms of trade.
- 1.10 **"Usual Business Hours"** means between 7am and 5pm Monday to Friday, to the exclusion of public holidays.

2 APPLICATION OF TERMS OF TRADE

- 2.1 These Terms shall apply to and govern the supply of Services and Materials by the Company to the Customer unless otherwise agreed in writing.
- 2.2 All Quotes given, and requests/orders for Services accepted by the Company, will be at all times subject to these Terms.
- 2.3 The Company reserves the right at any time and from time to time to amend, vary or add to these Terms with effect from the date of notification to the Customer.

3 ACCEPTANCE

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order for or accepts delivery of any Services.
- 3.2 These Terms may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.
- 3.3 Where the Customer is a tenant (and therefore not the owner of the land and premises where Services are to be completed and Materials to be installed) then the Customer warrants that the Customer has obtained the full consent of the owner for the Company to complete Services and to install Materials on the owners land and premises. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for all Services and Materials provided under this agreement and to indemnify the Company against any claim made by the owner of the premises in relation to the installation of the Materials and the provision of any Services by the Company which may arise as a result of the tenant not being the owner of the land and premises.

4 QUOTATION AND PRICE

- 4.1 If a Quote is given by the Company for the Services:
 - 4.1.1 Unless otherwise set out on the Quote shall be valid for fourteen (14) days from the date of issue; and
 - 4.1.2 The Quote shall be exclusive of GST unless specifically stated to the contrary.
- 4.2 The Company reserves the right to change the Quote or Price if:
 - 4.2.1 a variation to the Materials which are to be supplied is requested by the Customer or is required due to unavailability of originally quoted Materials; or
 - 4.2.2 additional Materials are required to complete the Services; or
 - 4.2.3 the price of Materials has increased by the Company's supplier/s since the date of issue of the Quote and the date of delivery of Materials and Services, this includes but is not limited to shipping costs; or
 - 4.2.4 a variation to the Services is requested by the Customer or required by any territorial authority or for statutory compliance; or
 - 4.2.5 additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not

limited to, limitations to accessing the site, obscured building defects, safety considerations, prerequisite work by any third party not being completed, 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 Services; or

- 4.2.6 there are any increases to the Company's costs of third party contractors or plant or equipment hireage rates which are beyond the Company's control; or
 - 4.2.7 the Company is required to provide the Services urgently and the Company's employees or contractors are required to work outside Usual Business Hours or through lunch breaks; or
 - 4.2.8 there are any other circumstances beyond the Company's control;
- and the Customer agrees to pay the increased Price resulting from all or any of the above circumstances as applicable.

- 4.3 Where the Customer requests the Company completes any assessment to diagnose a fault or inspect any fixtures, fittings or existing services that requires investigation, disassembly, testing and/or reporting, the Customer shall be liable for all costs involved in doing so, whether or not there is any required repair and whether such repair goes ahead or not unless otherwise advised in writing by the Company to the Customer.

- 4.4 Where a Quote is not requested nor provided, the Company shall charge the Company's applicable standard labour rate, travel charge, Materials and the cost of any third party contractors or plant or equipment hireage. Where Services are completed After Hours the Customer shall also be charged a Call Out Fee and the After Hours standard labour rate shall apply.

- 4.5 The Customer acknowledges and accepts that the minimum labour charge shall be one (1) hours labour, thereafter labour shall be calculated in fifteen (15) minute increments.

- 4.6 The Company shall have standard labour rates for Usual Business Hours and After Hours and travel charges which can be increased or decreased by the Company from time to time at the Company's sole discretion.

- 4.7 Stated or Quoted Prices are exclusive of GST.

5 AFTER HOURS CALL OUT FEE

- 5.1 The Customer acknowledges and accepts that a Call Out Fee will be applicable to all Services provided After Hours.
- 5.2 The Call Out Fee can be increased or decreased by the Company from time to time at the Company's sole discretion.

6 PAYMENT

- 6.1 Where the Services are provided to a Customer which is a business in trade the date for payment of the Company's invoice shall be the 20th day of the month following the date of the invoice unless otherwise agreed in writing with the Company.
- 6.2 Where the Services provided are to a Customer who is an individual or is not a business in trade the date for payment of the Company's invoice shall be 7 days from the date of the invoice.
- 6.3 At its sole discretion, the Company may require payment of a non-refundable deposit prior to commencement of the Services or providing the Materials. If a deposit is payable, the deposit percentage required will be noted on the Company's Quote provided to the Customer.
- 6.4 At its sole discretion the Company may issue invoices at the completion of its Services or by way of weekly or monthly instalments/progress payments.
- 6.5 Time is of the essence in respect of the payment obligations of the Customer. If payment is overdue that shall constitute a breach of these Terms and the Customer will upon demand pay to the Company interest on any overdue payment at the rate of 2.5% per calendar month from the date that payment was due until payment in full is received by the Customer.
- 6.6 If payment is overdue the Company may, in addition to its other remedies, require payment on or before the performance of any Services or delivery of any Materials ordered by the Customer under any contract, or withhold the performance of any such Services until the Customer has paid or discharged all sums owing to the Company.
- 6.7 Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in these

Terms shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

6.8 Payment will be made by direct credit, or by any other method as agreed to between the Customer and the Company.

6.9 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 Company nor to withhold payment of any invoice because part of that invoice is in dispute.

7 RESPONSIBILITY FOR THE SITE

7.1 The Customer shall ensure that the Company has authorised, clear and free access to the site where the Services are to be carried out at all times to enable the Company to carry out the Services.

7.2 Prior to the Company commencing any Services (if relevant), the Customer must advise the Company of the precise location of any services on site which may be in or around the area the Services shall be carried out, including, 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. Whilst the Company will take all reasonable care to avoid damage to any services, the Customer agrees to indemnify the Company 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 which are concealed from eyesight.

7.3 The Customer warrants that any structures to which the Company is to install or affix equipment and Materials or complete Services to are sufficiently durable to withstand the installation or affixation of the Materials or completion of the Services.

7.4 Unless otherwise advised, the Customer warrants that any existing plumbing, gasfitting and/or associated fixtures, fittings and services which are affixed, installed or situated upon the site which are subject to Services to be completed by the Company are in compliance with current standards, regulations or legislation. The Company reserves the right to suspend or terminate Services if in its opinion the site is unsafe and/or the existing plumbing, gasfitting and/or associated fixtures, fittings and services are illegal, the Customer will be informed of this and will be given a revised quotation or estimate to install new plumbing, gasfitting and/or associated fixtures, fittings and services in a safe and legal position. Should the Customer not wish to proceed the Company will charge its standard labour rate, travel charge, Materials and the cost of any third party contractors or plant or equipment hireage for Services already provided.

8 ACCURACY OF CUSTOMER'S INFORMATION

8.1 The Company 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 is inaccurate, the Company accepts no responsibility for any loss, damages, or costs however resulting from the inaccuracy of information. Where the Company follows information provided by the Customer or their agent, the Customer indemnifies the Company against all damages, penalties, costs and expenses in respect of which the Company may become liable through the utilisation of that information.

8.2 Where the Customer provides the Company with information relating to measurements and quantities of the Materials required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or the Company places an order based on these measurements and quantities. the Company accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

9 PROVISION OF SERVICES

9.1 Subject to clause 9.2, the Company will endeavour to complete the Services within the timeframes requested by the Customer (if any), but delivery time shall not be of the essence.

9.2 The Company may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.

9.3 Any time specified by the Company (if any) for completion Services is an estimate only and the Company 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 Services to be supplied at the time and place as was arranged between both parties. In the

event that the Company is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then the Company shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Materials (if relevant).

10 AGENCY

The Customer expressly authorises the Company to contract either as principal or agent for the provision of goods or services and the Customer agrees to pay any amounts due under that contract.

11 TITLE/OWNERSHIP

11.1 The Customer agrees that ownership of the Materials shall not pass to the Customer until the Customer:

11.1.1 has paid all amounts owing to the Company; and

11.1.2 has met all of its other obligations to the Company pursuant to these Terms.

11.2 The Customer agrees until ownership of the Materials passes to the Customer in accordance with clause 11.1:

11.2.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Company on request.

11.2.2 the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed and the production of these Terms by the Company shall be sufficient evidence of the Company's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Company to make further enquiries.

11.2.3 the Customer must not sell, dispose, or otherwise part with possession of the Materials. 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 Company and must pay or deliver the proceeds to the Company on demand.

11.2.4 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 Company and must sell, dispose of or return the resulting product to the Company as it so directs.

11.2.5 unless the Materials have become fixtures the Customer irrevocably authorises the Company to enter any premises where the Company believes the Materials are kept and recover possession of the Materials.

11.2.6 the Company may recover possession of any Materials in transit whether or not delivery has occurred.

11.2.7 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 Company.

11.2.8 the Company may commence proceedings to recover the price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

12 RISK

12.1 If the Company retains ownership of the Materials under clause 11 then 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 Company or the Company's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).

12.2 Notwithstanding the provisions of clause 12.1 if the Customer specifically requests the Company to leave Materials outside the Company'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.

12.3 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by

the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

- 12.4 In the event that the Customer requests the Company to use drain/pipe unblocking equipment, and the Company does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck and the equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 12.5 In the event asbestos or any other toxic substances are discovered at the site, it is the Customer's responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Company against any costs incurred by the Company as a consequence of such discovery. Under no circumstances will the Company handle removal of asbestos products or any other toxic substances.
- 12.6 The Customer acknowledges and agrees that where the Company has performed temporary repairs that:
 - 12.6.1 the Company offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - 12.6.2 the Company will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required upon request by the Customer.
- 12.7 The Customer acknowledges that:
 - 12.7.1 the Company is only responsible for Services which are completed by the Company and does not at any stage accept any liability in respect of previous goods and/or services supplied, maintained or installed by any other third party that subsequently fail and found to be the source of the failure and the Company shall not be liable for any loss or damage arising as a result;
 - 12.7.2 where the Customer has supplied goods or materials for the Company to complete the Services, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those goods and the Company shall not be liable for any loss or damage arising as a result of the supplied goods; and
 - 12.7.3 the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where the Company is requested to merely clear such blockages, the Company can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, the Company 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 upon request by the Customer.
- 13 **PERSONAL PROPERTIES SECURITIES ACT 1999 ("PPSA")**
- 13.1 The Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and a security interest is taken in:
 - 13.1.1 all Materials previously provided, or that will be provided in the future, by the Company to the Customer; and
 - 13.1.2 all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to the Company for Services that have previously been provided and that will be provided in the future by the Company to the Customer.
- 13.2 The Customer undertakes to:
 - 13.2.1 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 Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - 13.2.2 indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby; and
 - 13.2.3 not register a financing change statement or a change demand without the prior written consent of the Company.

- 13.3 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms of Trade.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Company, 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 Company under clauses 13.1 to 13.5.
- 14 **SECURITY AND CHARGE**
- 14.1 The Customer acknowledges and accepts that by accepting these Terms it charges all its rights, title, and interest (whether joint or several) in any land, realty, or other assets capable of being charged (including, but not limited to, the payment of any money), owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions.
- 14.2 The Customer indemnifies the Contractor from and against all the Company's costs and disbursements including legal costs on a solicitor's and own client basis incurred in exercising the Company's rights under this clause.
- 14.3 The Customer irrevocably appoints the Company and each director of the Company 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 **WARRANTY**
- 15.1 No guarantee or warranty is given, and no obligation incurred, by the Company in respect of Materials or components not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any guarantee or warranty given to the Company by the manufacturer or Company provided the Company shall not be required to pay or incur any cost in relation thereto.
- 15.2 The Company takes no responsibility for the warranty, repair, and replacement or any problem resulting whereby materials are supplied by the Customer. Such materials may be installed by the Company as per the manufacturer's instruction, but any fault, malfunction or manufacturer's warranty issue is the sole responsibility of the Customer. Any labour and/or Materials required in any rectification work will be charged to the Customer as an extra. Should the Customer wish to claim the costs, the Customer must first pay the Company's invoice, following which the Customer can claim reimbursement from the importer, wholesaler or other third party as the case may be.
- 15.3 If the Customer alleges defects in the Company's workmanship then the Customer shall forthwith after becoming aware of the same notify the Company in writing. Failure to notify the Company in writing within 30 days of the Services being provided shall constitute a waiver by the Customer of its rights against the Company in respect of any such alleged defect.
- 15.4 The Company shall have no liability where any Services performed or Materials supplied have been re-installed, modified, not maintained or improperly maintained or improperly used.
- 15.5 No guarantee, warranty, representation or statement shall be binding on the Company unless made in writing by a director or senior officer of the Company.
- 16 **LIABILITY**
- 16.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Company, the Company's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 16.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services and/or Materials from the Company for the purposes of business in terms of section 2 and 43 of that Act.
- 16.3 The Company shall have no liability to the Customer in respect of any defect arising from misuse, wilful damage, negligence, failure to follow instructions, unauthorised alteration or modification, abnormal working conditions or fair wear and tear.

16.4 The Company shall have sole right to decide whether Services are capable of repair and the Company's liability (if any) in respect of such Services shall be limited as follows:

16.4.1 where the Service are capable of repair, to the repair of the Services or the payment of the cost of having the Services repaired; or

16.4.2 where the Services are incapable of repair, to the replacement of the Services or supply of equivalent goods and services or the payment of the cost of replacing or re-doing the Services or acquiring equivalent Services.

16.5 If it shall be held that the Company has any liability to the Customer then the liability of the Company to the Customer shall be limited to the lesser of:

16.5.1 the value of invoice provided to the Customer by the Company in relation to the specific Materials and Services provided to the Customer in question;

16.5.2 the costs of completing any necessary repair;

16.5.3 the actual loss or damage suffered by the Customer.

16.6 Except where statute expressly requires otherwise the Company is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.

16.7 The Company shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, Quote, invoice, communication or other document or information issued by it.

16.8 The Customer agrees to indemnify and hold harmless the Company, its directors and employees, from and against any claims, damages, cost and liabilities and expenses (including but not limited to reasonable solicitors' fees) and liability asserted against the Company in relation to the Services and/or Materials.

17 IMAGES, AUDIO-VISUAL MEDIA AND MARKETING

18.1 The Customer gives permission for images and audio-visual media to be taken prior, during and upon completion of Services including but not limited for the purposes of progress records and marketing.

18.2 The Customer gives permission for images and audio-visual media to be utilised for marketing on the Company's website and social media platforms, including but not limited to Facebook and Instagram.

18 STATUTORY REQUIREMENTS

18.1 The Customer shall obtain, at their own cost, all licenses, approvals, applications, consents, certificates and permits that may be required unless otherwise agreed by the Company.

18.2 All Services completed by the Company will be tested to ensure that complies with the applicable rules and standards.

18.3 The Customer agrees that the site where the Company will be required to provide the Materials and/or Services will comply with any occupational health and safety laws (including without limitation site specific safety plans) and any other relevant safety standards, regulations or legislation (including without limitation any Covid-19 related legislation or government guidelines). The Company may refuse to enter or deliver to sites it deems to be unsafe and no claim may be made against the Company for failure to deliver or enter for this reason.

19 TERMINATION

19.1 The Customer may terminate this agreement at any time by written notice to the Company however the Customer shall not be entitled to cancel Services which have commenced unless consent from the Company is obtained in writing.

19.2 The Company may terminate or suspend (without any liability and without prejudice to any other rights in law or equity) this agreement if the Customer has breached these Terms and/or if the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 2006, or if liquidation proceedings are commenced in relation to the Customer, or if the Customer shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or insolvency on the part of the Customer. Any cancellation or suspension by the Company pursuant to this clause shall not affect the Company's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to the Company.

19.3 If the Customer terminates this agreement then the Customer must immediately pay the Company for the cost of all Services, Materials already provided/completed and reasonable consequential costs arising as a result of the Termination.

20 FORCE MAJEURE

20.1 The Customer accepts the Company cannot be held liable for failure, delay, loss or damage in circumstances of force majeure, including but not limited to act of God, war, terrorism, fire, flood, pandemic, Government-imposed restrictions or other events beyond the Company's control.

20.2 Nothing in this clause shall excuse payment of any amount owing by the Customer.

21 TERMS TO PREVAIL

No alteration or variation of these Terms will be binding on the Company unless authorised by the Company in writing.

22 SEVERANCE

Should these Terms or any part of them be held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, such term or part of it may in the Company's sole discretion be severed from the rest without affecting the validity or enforceability of the remaining terms.

23 WAIVER

The delay or failure by the Company to enforce its rights at any time or for any period in relation to any one or more of these Terms shall not be a waiver of them or of the right at any time subsequently to enforce these Terms.

24 DISPUTES

Any and all disputes arising between the parties will be resolved in the first instance by good faith discussions. In the event those discussions fail to resolve the dispute within a reasonable period, the parties will refer the dispute to mediation, by a mediator to be agreed upon by the parties, or failing such agreement, by a mediator nominated by the Resolution Institute upon request of either party.

25 PRIVACY ACT

Where the Privacy Act 2020 applies, the Customer authorises the Company to collect and hold personal information given to it by the Customer or obtained from any other source the Company considers appropriate in accordance with the Company's privacy policy: <https://www.burnsplumbing.co.nz/english-privacy-policy>.

26 NOTICES

Any notice, document, request, demand or other communication to be given for the purposes of these Terms are to be in writing and may be served personally or sent by mail or email to the address of the receiving party noted on the Quote or invoice.

27 JURISDICTION

New Zealand law governs these Terms and New Zealand Courts have exclusive jurisdiction.