

KUMEU PLUMBING LTD

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Kumeu Plumbing" shall mean Kumeu Plumbing Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Kumeu Plumbing .
- 1.3 "Goods" shall mean all goods, chattels, or services, provided by Kumeu Plumbing to the customer, and shall include without limitation the supply of all plumbing and roofing work and materials and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Kumeu Plumbing to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Kumeu Plumbing and the customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Kumeu Plumbing from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Kumeu Plumbing to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Kumeu Plumbing to any other party.
- 3.2 The customer authorises Kumeu Plumbing to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Kumeu Plumbing at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Kumeu Plumbing between the date of the contract and delivery of the goods.

5. PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20th day of the month following the date of the invoice, or on receipt of delivery of goods, whichever is the earlier ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Kumeu Plumbing in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by Kumeu Plumbing it:
 - 6.1.1 is valid for 30 days from the date of issue; and
 - 6.1.2 shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
 - 6.1.3 is based on rates and costs as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and charges and shall be increased or de-

creased by the amount of any increase or decrease in any such items or any other factors affecting the cost of production and/or delivery and/or installation due to circumstances beyond our control after the date of quotation;

6.1.4 is upon the basis that reasonable access to the property or premises is available where it includes the cost of delivery to the property or premises. If such access is not available an extra charge for handling will be added;

6.1.5 unless we have measured the structure at your request for the purposes of this quotation the sizes in the quotation are based upon the specifications supplied by you and additional costs arising from any inaccuracy of such specification shall be payable by you.

6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

6.3 On acceptance of a quotation a deposit of 50% of the price is payable with the balance on completion of the contract or as otherwise agreed between Kumeu Plumbing.

7. RISK

7.1 The goods remain at Kumeu Plumbing 's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.

7.2 Delivery of goods shall be deemed complete when Kumeu Plumbing gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.

7.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Kumeu Plumbing making time of the essence.

7.4 Where Kumeu Plumbing delivers goods to the customer by instalments and Kumeu Plumbing fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

7.5 Where we deliver goods to your premises or the place directed by you for the purposes of erection or installation all losses arising from destruction or theft or damage from whatever cause including weather, fire, water, earthquake and accident and whether they are wholly or partly installed or left on the site shall be borne by you.

8. AGENCY

8.1 The customer authorises Kumeu Plumbing to contract either as principal or agent for the provision of goods that are the matter of this contract.

8.2 Where Kumeu Plumbing enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

9. TITLE

9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Kumeu Plumbing .

9.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Kumeu Plumbing and:

9.2.1 The goods shall be held by the customer as bailee; and

9.2.2 If the goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by the customer or any third party, title in the goods shall remain with Kumeu Plumbing until the

TERMS AND CONDITIONS OF TRADE

customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be deemed to be assigned to Kumeu Plumbing as security for the full satisfaction by the customer of the full amount owing between Kumeu Plumbing and customer.

- 9.3 The customer gives irrevocable authority to Kumeu Plumbing to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Kumeu Plumbing shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

10. RETURN OF GOODS

- 10.1 The customer shall be deemed to have accepted the goods unless the customer notifies Kumeu Plumbing otherwise within 72 hours of delivery of the goods to the customer.
- 10.2 If the goods are not accepted according to clause 10.1 of this contract the customer shall pay for the delivery of the returned goods to Kumeu Plumbing whereby the customer shall be entitled to a credit for the purchase price of any such goods.

11. LIABILITY

- 11.1 Except as otherwise provided by statute Kumeu Plumbing shall not be liable for:
- 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Kumeu Plumbing to the customer and without limiting the generality of the foregoing of this clause Kumeu Plumbing shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
- 11.1.2 Except as provided in this contract Kumeu Plumbing shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Kumeu Plumbing to the customer; and
- 11.1.3 The customer shall indemnify Kumeu Plumbing against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Kumeu Plumbing or otherwise, brought by any person in connection with any matter, act, omission, or error by Kumeu Plumbing its agents or employees in connection with the goods.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Kumeu Plumbing for the purposes of a business in terms of section 2 and 43 of that Act.

13. GENERAL LIEN

- 13.1 The customer agrees that Kumeu Plumbing may exercise a general lien against any goods or any property belonging to the customer that is in the possession of Kumeu Plumbing for all sums outstanding under this contract and any other contract to which the customer and company are parties.
- 13.2 If the lien is not satisfied within 7 days of the due date Kumeu Plumbing may having given notice of the lien at its option either:
- 13.2.1 Remove such goods or property and store them in such a place and in such a manner as Kumeu Plumbing shall think fit and proper and at the risk and expense of the customer; or
- 13.2.2 Sell such goods or property or part thereof upon such terms as it shall think fit and apply the proceeds in or to-

wards discharge of the lien and costs of sale without being liable to any person for damage caused.

14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 14.2 Goods and services are warranted free from defective workmanship for a period of 12 months from delivery or installation and the customer shall notify Kumeu Plumbing within 72 hours of any defect that ought to have been reasonably identified by the customer or any warranty pursuant to this clause shall be void.

15. CANCELLATION

- 15.1 Kumeu Plumbing shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Kumeu Plumbing'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 Kumeu Plumbing under this contract.

16. MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Kumeu Plumbing.
- 16.2 Kumeu Plumbing shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by Kumeu Plumbing to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Kumeu Plumbing has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.6 If the customer is a company or trust, the director(s) or trustee(s) signing this contract jointly and severally guarantee to Kumeu Plumbing the payment of the balance of the customer's credit facility from time to time, and the payment of any and all other monies now or hereafter owed by the customer to Kumeu Plumbing. Any personal guarantee made by any party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 16.7 If any provision of this contract shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.8 Any performance guarantee provided by the NZ Society of Master Plumbers and Gasfitters or Kumeu Plumbing shall not extend to goods and materials supplied by you.
- 16.9 Any dispute or difference between Kumeu Plumbing and the customer arising under or connected with the goods or this contract shall be referred to the Master Plumbers Association of which Kumeu Plumbing is a member for settlement through that Association's dispute procedure.