

HAWKE'S BAY PLUMBING & GAS LIMITED

TERMS OF TRADE

1. DEFINITIONS

- 1.1 "Hawke's Bay Plumbing & Gas" shall mean Hawke's Bay Plumbing & Gas Limited or any agents or employees thereof.
- 1.2 "Customer or Purchaser" shall mean the customer/purchaser or any person or company acting on behalf of and with the authority of the customer/purchaser or any person purchasing products or service from Hawke's Bay Plumbing & Gas.
- 1.3 "Products" shall mean all goods, services, hire charges, terms of trade, debt collection services and advice supplied or provided by Hawke's Bay Plumbing & Gas to the purchaser.
- 1.4 "Price" shall mean the cost of the products as agreed between Hawke's Bay Plumbing & Gas and the purchaser and includes all disbursements subject to clause 5.1 and 5.2 of this contract.

2. REPRESENTATIONS

- 2.1 None of Hawke's Bay Plumbing & Gas Ltd agents or representatives are authorized to make any representations, statements, conditions or agreements not expressed by the managers of Hawke's Bay Plumbing & Gas in writing nor is Hawke's Bay Plumbing & Gas bound by any such unauthorized representations, statements, conditions or agreements.

3. ACCEPTANCE

- 3.1 Any instructions received by Hawke's Bay Plumbing & Gas from the Customer for the supply of products or services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

4. COLLECTION AND USE OF INFORMATION

- 4.1 The Customer authorizes Hawke's Bay Plumbing & Gas to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any products and services provided by Hawke's Bay Plumbing & Gas to any other party.
- 4.2 The Customer authorizes Hawke's Bay Plumbing & Gas to disclose any information obtained to any person for the purposes set out in clause 4.1.
- 4.3 Where the Customer is a natural person the authorities under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.
- 4.4 The Customer acknowledges it has been advised by Hawke's Bay Plumbing & Gas that it may at any time upon reasonable notice review and where appropriate amend or correct any information collected from the Customer held at the administration office of Hawke's Bay Plumbing & Gas.

5. PRICE

- 5.1 Where no price is stated in writing or agreed to verbally the products shall be deemed to be sold at the current amount as such products are sold by Hawke's Bay Plumbing & Gas at the time of the contract.
- 5.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of Hawke's Bay Plumbing & Gas between the date of the contract and delivery of the Products.

6. PAYMENT

- 6.1 Unless otherwise agreed in writing payment for products and services shall be made in full either:
- 6.1.1 On the date the contract is signed; Cash on Delivery.
- 6.1.2 Within 7 days following the date of the invoice ("the due date").
- 6.1.3 On or before the 20th day of the month following the date of invoice ("the due date").
- 6.2 Please note the Customer agrees that full payment is due on the due date for all products and services delivered to the purchaser by Hawke's Bay Plumbing & Gas.
- 6.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 6.4 Any expenses, disbursements and legal costs incurred by Hawke's Bay Plumbing & Gas in the enforcement of any rights contained in this contract shall be paid by the Customer, including any actual solicitor's fees or debt collection agency fees.

7. PAYMENT ALLOCATION

7.1 Hawke's Bay Plumbing & Gas may in its discretion allocate any payment received from the Customer towards any invoice that Hawke's Bay Plumbing & Gas determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Hawke's Bay Plumbing & Gas, payment shall be deemed to be allocated in such manner as preserves the maximum value of Hawke's Bay Plumbing & Gas' purchase money security interest in the Products.

8. QUOTATION

8.1 Where a quotation is given by Hawke's Bay Plumbing & Gas:

8.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;

And

8.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;

8.1.3 Hawke's Bay Plumbing & Gas reserves the right to alter the quotation because of circumstances beyond its control.

8.2 Where products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.

9. LIABILITY

9.1 Except as otherwise provided by statute Hawke's Bay Plumbing & Gas and its agents shall not be liable for:

9.1.1 Any loss or damage of any kind whatsoever, arising from the supply of Products to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products (including terms and conditions of trade) supplied to the purchaser; and

9.1.2 The Customer shall indemnify Hawke's Bay Plumbing & Gas and its agents against all claims and loss 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 negligence of Hawke's Bay Plumbing & Gas or otherwise, brought by any person in connection with any matter, act, omission, or error by Hawke's Bay Plumbing & Gas, their agents (including solicitors) or employees in connection with the products.

9.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Hawke's Bay Plumbing & Gas 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 Hawke's Bay Plumbing & Gas, Hawke's Bay Plumbing & Gas' 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.

10. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

10.1 Title in any Products supplied by Hawke's Bay Plumbing & Gas passes to the Customer only when the Customer has made payment in full for all Products provided by Hawke's Bay Plumbing & Gas and all other sums due to Hawke's Bay Plumbing & Gas by the Customer on any account whatsoever. Until all sums due to Hawke's Bay Plumbing & Gas by the Customer have been paid in full, Hawke's Bay Plumbing & Gas has a security interest in all Products.

10.2 If the products 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 Products shall remain with Hawke's Bay Plumbing & Gas until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to Hawke's Bay Plumbing & Gas as security for the full satisfaction by the Customer of the full amount owing between Hawke's Bay Plumbing & Gas and Customer.

10.3 The Customer gives irrevocable authority to Hawke's Bay Plumbing & Gas to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Hawke's Bay Plumbing & Gas believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Hawke's Bay Plumbing & Gas shall not be liable for any costs, damages, expenses or 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 unless by statute such liability cannot be excluded. Hawke's Bay Plumbing & Gas may either resell any repossessed Products and credit the Customers account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customers account with the invoice value thereof less such sum as Hawke's Bay Plumbing & Gas reasonably determine on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

10.4 Where Products are retained by Hawke's Bay Plumbing & Gas pursuant to clause 10, the Customer waives the right to receive notice under s.120 of the Personal Properties Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

10.5 The following shall constitute defaults by the Customer:

10.5.1 Non payment of any sum by the due date;

10.5.2 The Customer intimates that it will not pay any sum by the due date;

10.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products;

10.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Hawke's Bay Plumbing & Gas remains unpaid;

10.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customers assets or landlord distains against any of the Customers assets;

10.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;

10.5.7 Any material adverse change in the financial position of the Customer.

11. COPYRIGHT AND INTELLECTUAL PROPERTY

11.1 Hawke's Bay Plumbing & Gas owns and has copyright in all work, products designed and produced, electronic data, documents, including drawings, photographs, models, and specifications produced by Hawke's Bay Plumbing & Gas in connection with the products provided pursuant to this contract and the client may use the products only if paid for in full and for the purpose for which they were intended and supplied by Hawke's Bay Plumbing & Gas.

12. WARRANTY

12.1 Manufacturer's Warranties may apply.

13. PERSONAL GUARANTEE OF THE COMPANY DIRECTORS OR TRUSTEES

13.1 If the customer is a company or trust, the director(s) or trustee(s), the person signing this contract, in consideration for HAWKE'S BAY PLUMBING & GAS LTD agreeing to supply products (including services) and grant credit to the Customer at their request, also signs this contract in their personal capacity and jointly and severally personally guarantees and undertakes as principal debtors to HAWKE'S BAY PLUMBING & GAS LTD the payment of any and all monies now or hereafter owned by the Customer to HAWKE'S BAY PLUMBING & GAS LTD and indemnify Hawke's Bay Plumbing & Gas against non-payment by the Customer. Any personal guarantee or liability of a signatory hereto made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and guarantors and the Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

14. GENERAL LIEN

14.1 The Customer agrees that Hawke's Bay Plumbing & Gas may exercise a general lien against any products and services or property belonging to the Customer that is in the possession of Hawke's Bay Plumbing & Gas for all sums outstanding under this contract and any other contract to which the Customer and Hawke's Bay Plumbing & Gas are parties.

14.2 If the lien is not satisfied within 7 days of the due date Hawke's Bay Plumbing & Gas may, having given notice of the lien at its option either:

14.2.1 Remove such products and services and store them in such a place and in such a manner as Hawke's Bay Plumbing & Gas shall think fit and proper and at the risk and expense of the Customer; or

14.2.2 Sell such products and services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and the costs of sale with out being liable to any person for damage caused.

15. MISCELLANEOUS

15.1 HAWKE'S BAY PLUMBING & GAS LTD shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

15.2 Failure by HAWKE'S BAY PLUMBING & GAS LTD 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 HAWKE'S BAY PLUMBING & GAS LTD has under this contract.

15.3 Where the terms of this contract are at variance with the order or instruction from the Customer, this contract shall prevail.

15.4 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.