



A LONG TRADITION OF SUPREME SOLUTIONS

PLUMBING • GASFITTING • ROOFING • DRAINAGE



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(For the purposes of these Conditions the term "Company" refers to Plumbers Supreme Limited also trading as PlumbersSupremeGasLink®)

CONDITIONS OF SALE

1. PRICE

For any goods and materials to be supplied under this contract (the "goods"), "ex stock" prices shall be those prevailing at date(s) of delivery. If delivery is by instalments prices shall be those prevailing on the date of each delivery. For other goods supplied, prices shall be those prevailing at date(s) of invoice.

2. TERMS OF SALE

Unless specifically agreed all sales shall be on a cash before delivery basis. Any other form of payment shall not be deemed to be payment until that form of payment has been honoured. Without prejudice to its other rights the Company shall be entitled to withhold delivery until payment if it considers the buyer's creditworthiness to be unsatisfactory. Any credit granted will be on the basis that the price shall be paid in full without deduction not later than the 7th day following delivery or, if later, the date of the relevant invoice. Credit shall be revocable by the Company prior to delivery. Any default in payment shall make all other payments payable by the buyer to the Company immediately due. Without prejudice to its other rights the Company shall be entitled to charge a booking fee of the greater of \$20.00 or 10% of the amount overdue and interest on all overdue monies at the rate of two and a half percent (2.5%) per month or at such other rate as may be advised in writing by the Company from time to time, calculated daily and capitalised monthly, until all monies owing are paid in full. All payments credited to a customer's account are deemed to be payment in respect of the amounts longest outstanding in such account. The customer shall be liable for any costs incurred by the Company in recovering all overdue monies, and the Company shall be entitled to charge booking fees and interest on such monies at the rate and on the terms specified earlier in this paragraph.

3. DELIVERY

- (a) Delivery shall be made at the place indicated in the contract, or if no place is indicated, delivery shall be made at the Company's premises. If the buyer fails or refuses to accept delivery the goods shall be deemed to have been delivered when the Company was willing to deliver them (which date shall be the date of the invoice). The Company shall be entitled to deliver the goods by instalments and to require that each instalment shall be regarded as a separate contract under the same terms and conditions as the main contract. Should the Company fail to deliver or make defective delivery of one or more instalments this shall not entitle the buyer to repudiate the main contract. In the event that any amount due to the Company is not paid by the buyer by the date such payment becomes due the Company, in addition to any right it may have, shall be entitled to suspend all further deliveries to the buyer until all amounts due have been paid in full.
- (b) Goods are forwarded uninsured, unless the Company instructs the Customer otherwise or an undertaking to the contrary is given in the delivery notice, and the Customer is responsible for insurance of all goods in transit from the time of dispatch from the Company's premises
- (c) If the Company agrees to arrange transit, freight or insurance, then such arrangements shall be made as agents for the Customer and without liability to the Company.
- (d) Were the Company arranges delivery by courier, the delivery of the goods is deemed to be completed upon loading onto the courier
- (e) All claims in respect of missing or damaged goods must be notified to the Company (and the carrier) immediately on receipt of the goods.

4. OWNERSHIP OF GOODS AND GRANT OF SECURITY INTEREST

- (1) The risk in the goods shall pass upon delivery to the customer or to site, but ownership of the goods shall not pass to the buyer until the buyer has paid all monies in full owing under this contract. In this connection it is agreed that the buyer hereby grants to the Company, to the extent permissible under the PPSA, a security interest (comprising a purchase money security interest) over the goods, together with any proceeds. It is therefore agreed and acknowledged by the buyer that it:
 - (a) waives its right to receive verification statements in relation to any financing statement or financing change statement registered under the PPSA pertaining to the security interest created by this contract;
 - (b) agrees that to the extent permitted by law sections 114(1)(a), 133 and 134 of the PPSA will not apply;
 - (c) agrees that to the extent permitted by law it will have none of the rights otherwise conferred by sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 or 132 of the PPSA;
 - (d) shall, immediately on request, promptly provide to the Company any information, execute any documents and do anything else required by the Company to ensure that the security interest created by this contract constitutes a first ranking perfected security interest over the goods and their proceeds;
 - (e) shall pay to the Company all costs pertaining to the perfection or the enforcement of the security interest created by this contract, any costs incurred by the Company under section 162 of the PPSA and any costs incurred by the Company in pursuing any proceeding pursuant to section 167 of the PPSA, upon demand being made by the Company; and
 - (f) where the Company has rights in addition to those set out in Part 9 of the PPSA, those rights shall continue to apply.
- (2) Until such payment is made (time for which is strictly of the essence) the buyer shall:
 - (a) enable the goods to be readily identifiable as the property of the Company; and
 - (b) maintain the goods so supplied in good order and condition, and return them immediately if called upon by the Company to do so.
 - (c) shall insure and keep insured the goods to the full price against all risks until title in the goods has passed to the Customer.
- (3) If and in the event that:
 - (a) any money is overdue (in whole or in part) to the Company; and/or
 - (b) the buyer is in breach of any of its obligations to the Company under this contract; and/or
 - (c) the Company has reason to believe the buyer has committed or is reasonably likely to commit an act of bankruptcy or is adjudged bankrupt, or (being a company) has had a receiver or liquidator appointed or about to be appointed; and/or
 - (d) the Company at any time at its absolute discretion deems the credit of the buyer to be unsatisfactory; and/or
 - (e) the buyer ceases or threatens to cease carrying on all or substantially all of its business; and/or
 - (f) a distress, attachment or other execution is levied or enforced upon, or commenced against,

- any asset of the buyer and is not discharged or stayed within 14 days, or a judgment is obtained against the buyer and is not discharged or stayed within 14 days; and/or
- (g) the buyer enters into any composition or arrangement with its creditors (whether formally or not)
 - (i) the Company may cancel the contract forthwith without incurring liability and claim a proportion of the amount due hereunder proportionate to the work done up to the date of cancellation plus booking fee and interest thereon at the rate charged by the Company on overdue accounts until such proportion is paid.
 - (ii) the Company may recover and resell any or all of the goods and its agents or employees may without prejudice to its other rights and remedies enter upon the premises where the goods are situated without giving notice and take possession of and remove the goods without being responsible for any damage caused thereby. The buyer hereby irrevocably indemnifies the Company, its agents and employees against all claims, actions, costs and losses any of them may suffer or incur through such repossession or attempted repossession of the goods however arising.
- (4) If the goods are installed in other goods in such a way that the original goods supplied by the Company may be detached then upon payment being overdue in whole or in part the Company or the Company's agents or employees may (without prejudice to any of the Company's other rights) proceed to enter upon the buyer's premises or any other premises upon which the goods are situated to detach and remove such goods.
- (5) In all cases, if any of the goods supplied by the Company to the buyer are used by the buyer to make a new product the ownership in the whole of that product shall be and remain with the Company until such time as payment in full for the goods is made.
- (6) Despite the retention of ownership the buyer may prior to payment in full as agent for the Company sell the goods under a bona fide transaction not intended simply to deprive or in an attempt to deprive the Company of the benefit of the retention of title. In the event of a sale of the goods or any of them prior to payment in full the buyer shall as trustee for the Company:
 - (a) hold all monies received by the buyer on any such sale of the goods separate from the buyer's own money and in the name of and to the credit of the Company and the buyer will on request from the Company pay such proceeds to the Company; and
 - (b) hold all claims against purchasers of any such goods who have not made payment for the same in trust for the Company and the Company may in any of the said events either in the buyer's own name or in the name of the Company make claim to and issue proceedings to recover the sale price of such goods.
- (7) Until the Company is paid in full for all of the goods and or work supplied under the contract the buyer's relationship to the Company shall be fiduciary in respect of the goods or any new product in which they are incorporated and if the goods or the new product are sold the Company shall have the right to trace the proceeds.
- (8) The Company shall be entitled to notify the buyer's bankers of the terms of sale hereby recorded and of the fact that from time to time the buyer shall hold proceeds of sale of goods upon trust for the Company.
- (9) The buyer hereby agrees to meet all costs of and incidental to recovery of the goods, including but not limited to legal costs (on a solicitor - client basis), and reasonable freight costs, as well as any shortfall between the amount owing and the value of the goods recovered.
- (10) No attempt by any buyer, whether in writing or otherwise, to abrogate or exclude the provisions of this clause, whether prior to or at the time of or after the placing of any order for the supply of goods with the Company or at any other time shall be effective even where goods have been supplied by the Company without reference to such attempt unless the consent of the Company in writing has been first obtained.
- (11) The terms and conditions of this contract (and in particular this paragraph 4) shall:
 - (a) to the extent permissible under the PPSA (and in particular to the extent that those rights do not affect the rights of any third parties), and necessary to ensure consistency with this contract, vary the provisions of the PPSA as they apply to the matters governed by this contract, as contemplated in sections 107(2) and (3) of the PPSA; and
 - (b) to the extent that they are inconsistent with any provision(s) of the C(R)A, be deemed to be varied only to the extent necessary and in the manner appropriate in order to make them consistent with the relevant provision(s) of the C(R)A.

5. DELAY

It is acknowledged and agreed that any time for delivery of the goods shall be approximate only and shall not be deemed to be of the essence of the contract.

6. RETURNS

The Company may in its discretion accept goods returned by the buyer but shall not be bound to make any cash refunds in respect thereof. The Company shall be entitled to make a handling charge for returns of such amount as the Company in its discretion determines and such charge may be deducted from the cash or amount of credit to which the buyer may be entitled. Any freight costs for returns shall be borne by the buyer.

CONDITIONS OF QUOTE

7. PRICE

The Company's quotation is based on rates of exchange, freight, duty, taxes, wages, cost of materials, transport and other incidental expenses, applying at the date of quotation, unless otherwise specified. Any alterations due to any variation in any of those items shall be for the buyer's account and the contract price shall be adjusted accordingly. Where the contract price includes goods and materials not manufactured by the Company, the Company endeavours to obtain fixed prices from the Company's suppliers for such goods and materials, but any increase or decrease in such prices whether before or after the work is put in hand, is likewise to be for the buyer's account. The prices quoted for each product apply only if this quotation is accepted in full without any alteration. This quote is **NOT** for "FIXED PRICES" unless specifically noted as such, in which case special conditions will apply. All the items contained in the quote are conditional upon their availability. All goods will be supplied subject to the Conditions of Sale above.

8. ACCEPTANCE

This quotation is open for acceptance until the date and time stated, and if no time and date is stated, then up to 4.00PM on the thirtieth day following the date of this quotation, but subject in every case to the Company's right to withdraw at any time before acceptance.

9. INSTALLATION AND ACCESS

The buyer is to give the Company, its agents and employees access to the site and provide proper facilities for carrying out the work within a reasonable time after acceptance of the Company's quotation. Written notice is to be given to the Company when the premises are ready for the Company to begin installation. The Company expects to complete within the time stated in the quotation, such time to be computed from the date on which the buyer notifies the Company that the premises are ready for the Company to begin installation but the Company is not to be liable for any loss or damage, nor to cancellation of the contract for failure to complete within such time, or any given time. If access to the site and proper facilities for installation are not provided within a reasonable time after acceptance of the quotation, the Company is to have the option of rescinding the contract without prejudice to the Company's other remedies. Any loss or expense caused to the Company through the buyer's failure, or delay to provide access or other facilities, shall be borne by the buyer.

10. DAMAGE BY FIRE, ETC

After any portion of the goods or materials included in the Company's quotation has been brought by the Company to the place where they are to be erected or installed, or brought to the place where delivery is to be made, the goods or materials shall be at the buyer's risk and notwithstanding anything these terms and conditions or the Company's quotation states as to terms of payment, all losses arising from destruction or theft or damage to such plant, goods or materials from whatever cause including weather, fire, water, earthquake and accident and whether they are wholly or partly installed or are lying on the site, shall be borne by the buyer.

11. OWNERSHIP OF GOODS AND MATERIALS SUPPLIED

Paragraph 4 applies.

12. PAYMENT

Unless otherwise agreed, on acceptance of this quotation a deposit of 33% of the tender price is payable to the Company. Except where it takes the Company more than one month to complete the contract works, the balance is payable within seven days of practical completion of the contract works (as determined and notified by the Company to the buyer (acting reasonably)). Where completion of the contract works will take more than one month, the Company will make regular payment claims for progress payments, which shall be paid not later than the 20th of the month following receipt of the invoice to be issued by the Company. If you wish to submit a payment schedule (as referred to in the CCA) then you must do so within five (5) working days of receiving the payment claim. The Company shall be entitled to charge a booking fee and interest on all overdue monies at the rate of 2.5% per month or at such other rate as may be advised in writing by the Company from time to time, calculated daily and capitalised monthly, until the Company is paid in full. If the buyer is a Residential Occupier (as defined in the CCA) then he or she must refer to the Important Notice attached (which forms part of these terms and conditions). (Also refer Paragraph 2)

13. STRIKES, ETC

The Company is not liable for any delay in completion of the contract or product defect due to strikes, disputes with workmen, accidents, war, civil commotion, epidemics, fire, floods, stress of weather, delays in transportation, shortage of labour, acts, demands or requirements of any government or similar authority, failure of manufacturers to deliver or to any other cause beyond the Company's reasonable control, even if such cause existed at the date of the quotation.

14. SUSPENSION OF WORK

It is acknowledged and agreed that if and in the event that the contract comprises a construction contract in terms of the CCA, the Company may be entitled under certain circumstances to suspend the works covered by this contract in accordance with Part 4 of the CCA.

15. CONDITIONS OF QUOTE PARAMOUNT

Where there is a conflict between any provision in the conditions of sale and the conditions of quote, the provisions of conditions of quote shall be paramount.

GENERAL CONDITIONS

16. TAXES AND DUTIES

Unless expressly included in any contract or quotation given by the Company, sales taxes, goods and services taxes and other taxes and duties assessed or levied in connection with this contract are not included in the price and are the responsibility of the buyer. Unless expressly stated otherwise in this contract the buyer shall pay all such amounts at the same time that the price is to be paid.

17. CONDITIONS OF CREDIT

As stated on the Plumbers Supreme Limited Application to open Credit Account form Plumbers Supreme Limited reserves the right (and it is our normal business practice) to seek credit information on credit customers (including obtaining (a) credit report(s) from credit reporters, now and in the future), and to provide credit information to credit reporters and debt collection companies as to the fact that a credit application has been made and (in the case if debtors who fail to meet their obligations) the credit default information.

18. CONTRACTUAL TERM(S)

To the fullest extent permitted by law all warranties, descriptions, representations and conditions as to fitness or suitability for any purpose tolerance to any conditions or otherwise whether of a like nature or not and whether expressed or implied by law, trade custom or otherwise not expressly set forth herein are (subject only to paragraph 20) expressly excluded. No agent or representative of the Company is authorised to make any representations, statements warranties conditions or agreements not expressly set forth herein and the Company is not any way bound thereby nor can any such statement be taken to form part of any agreement collateral hereto.

19. RECEIVER

In addition to any other right, power or remedy of the Company expressed or implied in this agreement, at any time after the Customer has defaulted in its obligations, the Company may appoint in writing any person or persons to be a receiver of all or any of the collateral and the receiver shall have the powers set out in the Receiverships Act 1993.

20. TRUSTEE LIABILITY

Where the Customer is a trust, each trustee of the trust is bound by this Agreement and the trustees' liability shall not be limited to the assets of the trust unless the trustee is an independent trustee (being a trustee who has no right to or interest in any of the assets of the trust either directly or indirectly except in the trustee's capacity as trustee of that trust). However, this limitation of liability for independent trustees shall not affect the liability of the independent trustee that personally guarantees the Customer's obligations under this Agreement.

21. LIABILITY

The Company shall not (subject only to paragraph 20) be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the buyer arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the contract or from any cancellation of the contract or from any negligence on the part of

the Company, its employees, agents or contractors, nor shall the Company be liable for any loss damage or injury caused to the buyer's employees, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever.

22. CONSUMER GUARANTEES ACT 1993

- (1) Notwithstanding anything contained in any of clauses 6,18 and/or 21, and subject to paragraph (2) below, the CGA shall apply to the supply of goods by the Company.
- (2) Notwithstanding paragraph (1), it is acknowledged that the sale by the Company and purchase by the buyer of the goods pursuant to this contract may be a supply to:
 - (a) a person other than a "consumer" in terms of the CGA; or
 - (b) a person for business purposes,and if so the buyer acknowledges that the supply under this contract is a supply for business purposes in terms of sections 2 and 43 of the CGA and the provisions of the CGA will not apply to the sale of the goods or services whether made pursuant to this contract or otherwise.
- (3) In the event that paragraph (2) does not apply, then any provisions of this contract which reduce, limit or are contrary to the guarantees and remedies contained in the CGA shall be deemed to be deleted and omitted from this Agreement for the purposes of the CGA, and in such situation the warranties and guarantees contained herein (if any) are additional to the rights and remedies of the buyer as are contained in the CGA.
- (4) Where the Purchaser on-sells goods or items manufactured using any goods to consumers who purchase the same for business purposes or to persons who are not consumers, the buyer shall contract out of the CGA. Should the buyer fail to do this, the buyer shall indemnify the Company against any claim, expense or loss suffered by the Company as a direct or indirect consequence of such failure.

23. GUARANTEE

Any performance guarantee provided by the NZ Society of Master Plumbers & Gasfitters or the Company shall not extend to goods and materials supplied by the buyer. The Company gives no further warranty in respect of the goods than those warranties explicitly given in writing on the invoice or quotation supplied to the Customer or any specified product warranty accompanying the goods that is passed on to the Customer and all other implied terms, conditions and warranties are expressly excluded.

24. SECONDHAND GOODS

Where any second hand goods are supplied to the Customer, the Customer acknowledges that no warranty is given by the Company, in respect of the second hand goods, as to the quality or suitability for any purpose and any implied warranties, in so far as may lawfully be possible, are expressly excluded. The Company shall not be responsible for any loss or damage to the second hand goods, or caused by the second hand goods, or any part thereof whatsoever arising. The Customer further acknowledges that he has had full opportunity to inspect the second hand goods and that he accepts the same with all faults.

25. PRIVACY ACT 1993

The buyer acknowledges that any personal information provided to the Company or any existing personal information held by the Company will be used for the following purposes:

- (a) considering this application and any further applications made from time to time, and assessing the buyer's creditworthiness;
- (b) administering and enforcing this contract, and maintaining credit records with the Company and any other external agencies;
- (c) from time to time marketing goods and services provided by the Company.

The buyer hereby irrevocably authorises the Company to:

- (i) collect personal information about the buyer from other sources as the Company shall reasonably require (including pursuant to paragraph 17);
- (ii) retain and use personal information about the buyer and the buyer's contract(s); and
- (iii) provide personal information to any other person, including the employees and agents of the Company, the buyer's bankers (pursuant to paragraph 5(8)), and other external agencies (including providing credit information to credit reporters (to enable them to carry out their credit reporting services, which may include providing that credit information to other parties) pursuant to paragraph 17), for the purposes listed above).

The Company will tell the buyer the identity of these agencies if requested. All such personal information will be held by the Company at its business address and by other parties for the purposes listed above. The buyer acknowledges that if the personal information requested in this application is not provided, then this application may be declined. Where the personal information can be readily retrieved the buyer shall have access to it and the right to have the information corrected. Subject to the Privacy Act 1993, a fee for retrieval and correction may be charged.

26. DISPUTES

The Company will not consider any job or account queries which are not raised within 1 month from the date of invoice. In the event of a dispute arising between the parties relating in any way to this contract, the parties shall before referring the dispute to arbitration, resolution or adjudication, investigate whether the dispute can be settled using an appropriate dispute resolution technique. If the dispute is not resolved within 21 days of written notice by one party to the other that they wish such an investigation to take place then either party may refer the dispute to the dispute resolution procedure.

27. DISPUTE RESOLUTION PROCEDURE

All differences and disputes which may arise between the parties concerning the terms of contract between the parties shall:

- (1) if the contract does not constitute a construction contract within the definition of that expression contained in the CCA, be referred to the arbitration of a single arbitrator, to be nominated by the Wellington Master Plumbers & Gasfitters Association Inc, of which the Company is a member, or (if agreed between the parties) to the Wellington Master Plumbers & Gasfitters Association Inc for settlement through that Association's Dispute Procedure, and in either case the award shall be binding on the parties; or
- (2) if the contract does constitute a construction contract within the definition of that expression contained in the CCA, to adjudication pursuant to and in accordance with Part 3 of the CCA. For the purposes of section 33(1)(c) of the CCA, if no person is agreed upon, the nominating body shall be the Wellington Master Plumbers & Gasfitters Association Inc. It is noted that, in these circumstances, the CCA provides that under certain circumstances the Company may pursuant to and in accordance with Part 3 of the CCA seek a charging order over the site where the goods are being installed.

28. INVALIDITY

If any provision in this contract shall be held to be illegal, void, invalid or unenforceable under the laws for the time being of New Zealand, the legality, validity and enforceability of the remainder of this contract shall not be affected

29. CHANGE OF THESE TERMS AND CONDITIONS

The Company may alter these terms and conditions at any time by giving written notice of such change.

30. INTERPRETATION

In these terms and conditions, any expressions defined in any of the Consumer Guarantees Act 1993 (the "CGA"), the Credit (Repossession) Act 1997 (the "C(RA)") or the Personal Property Securities Act 1999 (the "PPSA") shall bear the relevant meaning ascribed to them in the relevant of those Acts