

Terms of Trade

(For the purposes of these Conditions, the term "Company" refers to "Plumbing World Limited")

A. CONDITIONS OF SALE

1. Definitions and Interpretation

"Buyer" means the person seeking to acquire Goods from the Company. Where the Buyer is more than one person, these Terms will bind those persons jointly and severally.

"Goods" means goods supplied by the Company to the Buyer from time to time.

"Guarantor" means any person who signed the Buyer's application to open a credit account form in the capacity as a guarantor.

"Quote" means a written quote provided by the Company to the Buyer for the Goods and attached to these Terms.

"PPSA" means the Personal Property and Securities Act 1999.

"Terms" means these terms and conditions of trade.

2. Terms of Trade

These Terms apply to the supply of all Goods by the Company to the Buyer, and prevail over any other terms and conditions asserted by or on behalf of the Buyer or any other person in respect of such supply. By accepting a Quote and/or submitting an order for Goods to the Buyer, the Buyer accepts these Terms and each order accepted by the Company will constitute a separate agreement ("Agreement").

3. Price

For Goods supplied 'ex stock', prices are those prevailing at date(s) of delivery. If delivery is in instalments, prices are those prevailing on the date of each delivery. For other goods supplied, prices are those prevailing at date(s) of invoice.

4. Taxes & Duties

4.1. Unless otherwise expressly stated, all prices exclude:

- any applicable taxes (including GST), duties, or other similar charges imposed on or in relation to the Goods ("Taxes"); and
 - any freight, insurance and other charges arising from the delivery of the Goods ("Freight Costs"), which must be paid by the Buyer in addition to the price of the Goods.
- 4.2. The Company will issue the Buyer a valid tax invoice for all Goods supplied (plus any applicable Taxes and Freight Costs).

5. Terms of Sale

Unless specifically agreed, all sales are on a cash before delivery basis. Without prejudice to its other rights, the Company is entitled to withhold delivery until payment if it considers at its absolute discretion the Buyer's credit worthiness to be unsatisfactory. Any credit granted will be on the basis that the price must be paid in full without deduction not later than the 20th day of the month following delivery. Credit is revocable by the Company for any reason prior to delivery of the Goods. Any default in payment will make all other payments payable by the Buyer to the Company immediately due. Without prejudice to its other rights the Company is entitled to charge interest on all overdue monies at the rate of two and a half percent (2½%) per month or at such other rate as may be advised in writing by the Company from time to time, with such interest continuing to accrue until all payments due are paid in full. Any payments credited to a Buyer's account are deemed to be payment in respect of the amounts longest outstanding in such account unless otherwise agreed in writing by the Company. The Buyer is liable for all costs incurred by the Company (including all legal costs on a solicitor/client basis) in recovering all overdue monies.

6. Orders and Delivery

- Every order must be submitted by the Buyer to the Company in writing. The Company reserves the right to refuse any order for Goods, and no order is binding until accepted by the Company. Acceptance will be given either by the Company confirming acceptance of the order in writing, or by the Company delivering the order.
- The Buyer cannot cancel or amend an order without the written agreement of the Company.
- Delivery will be made to the place indicated in the Quote, or if no place is indicated, delivery will be made at the Company's premises. If the Buyer fails or refuses to take delivery, the Goods will be deemed to have been delivered when the Company was willing to deliver them. The Company is entitled to deliver the Goods by instalments and to require that each instalment be regarded as a separate Agreement under the Terms. If the Company fails to deliver or makes defective delivery of one or more instalments, this does not entitle the Buyer to repudiate the Agreement. In the event that any amount due to the Company is not paid by the Buyer promptly when due, the Company, in addition to any right it may have, is entitled to suspend all further deliveries to the Buyer until all amounts have been paid in full. All claims in respect of Goods must be made within seven (7) days of the Goods being delivered to the Buyer.

7. Delay

Any time for delivery of the Goods is approximate only and will not be deemed to be of the essence of the Agreement.

8. Property and Risk

- Risk (including insurance responsibility) passes on delivery (as defined in clause 6). Title to the Goods does not pass until the Company has received full payment for those Goods. The Buyer must ensure that it keeps the Goods separate from other Goods, and is always able to identify the Goods until those Goods are either paid for in full by the Buyer or sold by the Buyer in the ordinary course of its business.
- In the event of default in payment on the due date (time for which is strictly of the essence), the Buyer must, at the request of the Company, hand to the Company the said Goods or such Goods that have not been sold AND the Company is authorised by the Buyer to enter any premises on which the Goods may be located and to recover the same.
- The Buyer agrees to meet all costs of and incidental to the recovery of the said Goods as well as any shortfalls in the amount owing and the value of the Goods recovered.
- Notwithstanding the retention of ownership, the Buyer may prior to payment in full as an agent for the Company sell the Goods under a bona fide transaction not intending simply to deprive or in an attempt to deprive the seller 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 will, as a trustee for the Company:
 - hold all moneys 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
 - 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 its own name or in the name of the Company make claim to and issue proceedings to recover the sale price of such Goods.
- The Company is 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 must hold the proceeds of Goods upon trust for the Company. In respect of any Goods which are mixed with or used as a constituent part of any product manufactured or constructed by the Buyer for on sale to third parties, immediately upon such manufacture and construction occurring the Buyer agrees to store such resultant product on a separate and identifiable part of the Buyer's premises. All proceeds of sale must be held by the Buyer upon trust for the Company as described above.

9. Personal Property and Securities Act 1999

- The Buyer grants the Company a security interest in the Goods (and proceeds of the Goods) as security for all amounts owing under these Terms and for the performance by the Buyer of its obligations under any Agreement. The Buyer acknowledges receipt of a copy of these Terms and waives any right it may have to receive from the Company a copy of any financing statement, verification statement or financing change statement that is registered, issued or received in relation to any Goods supplied under these Terms. The Buyer must immediately notify the Company in writing of any change of name of the Buyer. The Buyer must do all things reasonably requested by the Company for the Company to perfect its security interest in the Goods, including if applicable, to register a purchase money security interest on the Personal Property and Securities Register.
- To the extent that part 9 of the PPSA applies to any security interest created under these Terms, the Buyer agrees that sections 114(1)(a) (Notice of sale of collateral), 133 (Debtor may reinstate security agreement) and 134 (Limit on reinstatement of security agreement) of the PPSA will not apply on the enforcement by the Company of its rights in respect of any such security interest. The Buyer also waives any rights it may have under the PPSA:
 - to receive a statement of account from the Company if the Company sells the secured Goods under section 109 where the Buyer is in default under the security agreement or the secured Goods are at risk (section 116);
 - to receive notice of (under section 120(2)), and raise an objection to (under section 121), the Company's proposal to take the secured Goods in satisfaction of the obligation secured by it;
 - for the Company to take possession of the secured Goods, in a manner that causes no greater damage to other goods or that puts the Buyer to no greater inconvenience than is necessarily incidental to the removal of the secured Goods (section 125);
 - for persons (other than the Buyer) to receive reimbursement, and require security for that reimbursement, from the Company under sections 126 and 127, for any damage to that person's interest in other goods caused by the removal of the secured Goods;

- to receive notice under section 129 of the Company's intention to remove secured Goods (where the Company is entitled to remove the secured Goods under the PPSA);
 - to request that the Court make an order postponing the removal of the secured Goods under section 131; and
 - to have priority over any other person's right to redeem the secured Goods under section 132.
- The terms "security interest", "financing statement", "verification statement", "financing change statement" and "purchase money security interest" have the meanings set out in the PPSA.
 - This provision is designed to protect the Company in event of bankruptcy, receivership or liquidation of the Buyer, a seizure of Goods by a creditor of the Buyer or default in payment. Until payment is made by the Buyer for the Goods, the Buyer will be only a fiduciary owner of the Goods and the Buyer agrees to:
 - Enable the Goods to be readily identifiable as the property of the Company.
 - Maintain the Goods so supplied in good order and condition and to return the Goods immediately if called upon to do so by the Company.

10. Agreement to Mortgage

- The Buyer shall, at any time before payment for the Goods in full is made to the Company, irrevocably grant to the Company an all obligations registrable mortgage (the Mortgage) over any property owned by the Buyer (the Property).
- The Mortgage shall be registered in favour of the Company on the terms of the most current Auckland District Law Society Memorandum of Mortgage (all obligations) to be prepared by the Company's solicitors at the Buyer's cost, for the amount equivalent to the unpaid balance owing for the Goods plus any interest and costs owing thereon until paid in full.
- The Company shall have the right (at its discretion) to lodge and maintain a caveat against the title to the Property for the protection of the agreement to mortgage described above.
- The Buyer hereby grants to the Company an irrevocable power of attorney in relation to the Property to enable the Company to execute the Mortgage should the Mortgage not be executed by the Buyer for any reason whatsoever provided that the Company will not execute the Mortgage as attorney for the Buyer unless the Company has requested in writing that the Buyer execute the Mortgage pursuant to the terms of this agreement and the Buyer has failed to execute the Mortgage within five (5) working days of such request.

11. Returns

The Company may, in its discretion, accept Goods returned by the Buyer but is not bound to make any cash refunds in respect of such returned Goods. The Company is entitled to make a handling charge for returned Goods 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 for the returned Goods.

12. Determining when the Buyer is not a 'Consumer'

If the Buyer is acquiring the Goods for the purpose of resupplying them in trade, or repairing or treating in trade other goods or fixtures on land, the Buyer acknowledges that it is not a 'consumer' as defined in the Fair Trading Act 1986 ("FTA") and Consumer Guarantees Act 1993 ("CGA"). Accordingly, the rights that a 'consumer' has under those acts will not apply to such a Buyer.

13. Confirmation of consumer rights

Subject to clause 13, nothing in these Terms affects any rights that a person who is a 'consumer' for the purposes of the FTA or CGA may have under those Acts.

14. Business-to-Business contracting out - Consumer Guarantees Act 1993

The Buyer acknowledges and agrees that if it is acquiring the Goods for the purposes of a business, the provisions of the CGA will not apply to such supply.

15. No warranties or reliance

Except as expressly provided in these Terms or an Agreement, all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are expressly excluded, including without prejudice to the generality of the foregoing, any implied warranties of merchantability and fitness for a particular purpose. No agent or representative of the Company is authorised to make (and the Company will not be bound by) any representations statements warranties conditions or agreements not expressly set out in these Terms.

16. Performance

If the Company at any time deems the credit of the Buyer to be unsatisfactory, the Company may, without prejudice to its other rights and remedies, enter upon the premises where the Goods are situated and take possession of and remove the Goods without being responsible for any damage caused thereby.

17. Liability

- The Company is not 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 from any breach of the Company's obligations arising under or in connection with the Agreement, or from any cancellation of the Agreement, or from any negligence on the part of the Company, its servants, agents or contractors. The Company is not liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever.
- The Company's liability is otherwise limited to the value of the Goods acquired under the applicable Agreement.

18. Termination

The Company may terminate any Agreement (at its absolute and unfettered discretion) by giving notice to the Buyer, and neither party will be bound by the Agreement except:

- to the extent necessary to allow the Company to obtain payment for any Goods delivered to the Buyer or to recover possession of Goods in accordance with clause 8;
 - clause 12 (dealing with liability) will continue to be of full force and effect; and
 - that any supply of Goods made by the Company to the Buyer after the termination of any such Agreement shall, unless the parties agree otherwise, be made on the Terms.
- The Company will be under absolutely no obligation to provide the Buyer or any other person with any explanation of the reasons for the termination.

B. GUARANTEE

- In consideration for the Company agreeing to supply Goods and grant credit to the Buyer at the Guarantors' request, each of the Guarantors irrevocably guarantees the performance of the Buyer's obligations under these Terms and any Agreement, and undertakes as principal debtors to the Company the payment of any and all monies now or hereafter owed by the Buyer to the Company under these Terms or any Agreement, and indemnifies the Company against any non-performance or non-payment by the Buyer. The Guarantors' liability shall not exclude the Buyer in any way whatsoever from the liabilities and obligations contained in these Terms and in any Agreement. The Guarantors shall be jointly and severally liable under the terms of this guarantee and for the payment of all sums due hereunder. This guarantee shall be a continuing guarantee and shall not be satisfied or discharged by the Buyer's account at any time or times coming into credit but shall continue in full force and effect.

C. CONDITIONS OF QUOTE

- A Quote provided by the Company to the Buyer (whether written or oral) is not an offer but is an invitation only for the Buyer to place an order based on that Quote. Any Quote is valid for 30 days (unless otherwise stated in the Quote), after which period the Quote shall expire.
- If the Company provides a written Quote to the Buyer, the price of the Goods specified in the Quote is an indication of the price only (unless specifically stated otherwise) and the relevant Agreement shall include any other specific terms set out in that Quote provided that:
 - the Buyer submits an order based on the Quote within the stated time period by returning a signed copy of the Quote to the Company's office.
 - any queries or objections must be raised by the Buyer and attended to before the Quote is signed and accepted by the Buyer; and
 - the Company accepts that order under clause 6.1 of the Conditions of Sale in these Terms.
- The Buyer acknowledges that:
 - the prices indicated in the Quote are subject to change at any time before the Buyer accepts the Quote. The Company will give you notice of such change.
 - All Quotes are conditional upon the Goods being available.
- If there is any inconsistency or conflict between these Terms and any Quote or order, these Terms prevail, and if there is any inconsistency or conflict between a Quote and an order, the Quote prevails.

D. CONDITIONS OF CREDIT

- If the Buyer is purchasing Goods from the Company on credit, the Company reserves the right (and is its normal business practice) to seek credit information about the Buyer and to provide information to Credit Reference and Debt Collection Companies as to the fact that a credit application has been made and if the Buyer fails to meet its payment obligations under these Terms, the details of the Buyer and its debts.

Customer initials

Initiating this page confirms you have read and agree to the above terms.