

Ulrich Plumbing Limited – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "UPL" shall mean Ulrich Plumbing Limited its successors and assigns or any person acting on behalf of and with the authority of Ulrich Plumbing Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by UPL to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by UPL to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by UPL to the Customer.
- 1.5 "Services" shall mean all services supplied by UPL to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between UPL and the Customer in accordance with clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by UPL from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by UPL shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of UPL.
- 2.4 The Customer shall give UPL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by UPL as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by UPL only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
3. **Price And Payment**
- 3.1 At UPL's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by UPL to the Customer in respect of Goods supplied; or
 - (b) UPL's quoted Price (subject to clause 3.2) which shall be binding upon UPL provided that the Customer shall accept UPL's quotation in writing within thirty (30) days.
- 3.2 UPL reserves the right to change the Price in the event of a variation to UPL's quotation.
- 3.3 UPL may submit detailed progress payment claims in accordance with UPL's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At UPL's sole discretion a discount may be offered on accounts paid within the credit terms.
- 3.5 At UPL's sole discretion:
 - (a) payment for approved Customers shall be made by instalments in accordance with UPL's payment schedule; or
 - (b) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and UPL.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery Of Goods**
- 4.1 At UPL's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by UPL or UPL's nominated carrier).
- 4.2 At UPL's sole discretion the costs of delivery are in addition to the Price and for the Customer's account. A travel fee shall be charged by UPL at a per kilometre rate to and from UPL base in Hamilton.
- 4.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.4 UPL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 The failure of UPL to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 UPL shall not be liable for any loss or damage whatsoever due to failure by UPL to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of UPL.
5. **Risk**
- 5.1 If UPL retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, UPL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by UPL is sufficient evidence of UPL's rights to receive the insurance proceeds without the need for any person dealing with UPL to make further enquiries.
- 5.3 The Customer acknowledges and agrees that the presence of plant/tree root growth and/or blockages generally indicates damaged pipes. Accordingly the Customer agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.
- 5.4 Where the Customer has supplied materials for UPL to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. UPL shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
6. **Rubbish Removal**
- 6.1 Unless otherwise agreed in writing, UPL shall remove all metal waste associated with the Services (including pipes and cylinders) for recycling. UPL shall be entitled to any proceeds from the sale of such scrap metal.
7. **Access**
- 7.1 The Customer shall ensure that UPL has clear and free access to the work site at all times to enable them to undertake the works. UPL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of UPL.
8. **Underground Locations**
- 8.1 Prior to UPL commencing any work the Customer must advise UPL of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, 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, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst UPL will take all care to avoid damage to any underground services the Customer agrees to indemnify UPL 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 as per clause 8.1.
9. **Title**
- 9.1 UPL and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid UPL all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to UPL in respect of all contracts between UPL and the Customer.
- 9.2 Receipt by UPL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then UPL's ownership or rights in respect of the Goods shall continue.
- 9.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until UPL shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from UPL to the Customer UPL may give notice in writing to the Customer to return the Goods or any of them to UPL. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Customer is only a bailee of the Goods and until such time as UPL has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to UPL for the Goods, on trust for UPL; and
 - (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that UPL will be the owner of the end products; and
 - (e) if the Customer fails to return the Goods to UPL then UPL or UPL's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and UPL will not be liable for any reasonable loss or damage suffered as a result of any action by UPL under this clause.
10. **Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by UPL to the Customer (if any) and all Goods that will be supplied in the future by UPL to the Customer.
- 10.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which UPL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, UPL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of UPL; and
 - (d) immediately advise UPL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 UPL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by UPL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by UPL under clauses 10.1 to 10.5.
11. **Security And Charge**
- 11.1 Despite anything to the contrary contained herein or any other rights which UPL may have whatsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to UPL or UPL's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that UPL (or UPL's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should UPL elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify UPL from and against all UPL's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint UPL or UPL's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
12. **Customer's Disclaimer**
- 12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with UPL or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by UPL and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
13. **Defects**
- 13.1 The Customer shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify UPL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford UPL an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which UPL has agreed in writing that the Customer is entitled to reject, UPL's liability is limited to either (at UPL's discretion) replacing the Goods or repairing the Goods.
14. **Returns**
- 14.1 Returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 13.1; and
 - (b) UPL has agreed in writing to accept the return of the Goods; and
 - (c) the Goods have not been installed at all; and
 - (d) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (e) UPL will not be liable for Goods which have not been stored or used in a proper manner; and
 - (f) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.2 UPL may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.
- 14.3 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
15. **Warranty**
- 15.1 For Goods not manufactured by UPL, the warranty shall be the current warranty provided by the manufacturer of the Goods. UPL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15.2 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by UPL as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. UPL shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 15.3 In the event UPL are called to fix an issue caused by a defective Good supplied by the Customer, then the Customer shall be liable for all charges incurred including, labour, travel and parts involved in the repair.
16. **Consumer Guarantees Act 1993**
- 16.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by UPL to the Customer.
17. **Default & Consequences Of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at UPL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by UPL.
- 17.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify UPL from and against all costs and disbursements incurred by UPL in pursuing the debt including legal costs on a solicitor and own client basis and UPL's collection agency costs.
- 17.4 Without prejudice to any other remedies UPL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) UPL may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. UPL will not be liable to the Customer for any loss or damage the Customer suffers because UPL has exercised its rights under this clause.
- 17.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 17.6 Without prejudice to any other remedies UPL may have, if at any time the Customer is in breach of any obligation (including those relating to payment), then any discount, markdown, reduction or special price, previously offered by UPL to the Customer may be withdrawn, or cancelled, and the Price shall become UPL's standard Price as at the date of the original sale.
- 17.7 Without prejudice to UPL's other remedies at law UPL shall be entitled to cancel any or any part of any order of the Customer which remains unfulfilled and all amounts owing to UPL shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to UPL becomes overdue, or in UPL's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
18. **Cancellation**
- 18.1 UPL may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice UPL shall repay to the Customer any sums paid in respect of the Price. UPL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by UPL (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
19. **Privacy Act 1993**
- 19.1 The Customer and the Guarantor/s (if separate to the Customer) authorises UPL to:
 - (a) collect, retain and use any information about the Customer and/or Guarantor/s, for the purpose of assessing the Customer's and/or Guarantor's creditworthiness or marketing products and services to the Customer and/or Guarantor/s; and
 - (b) disclose information about the Customer and/or Guarantor/s, whether collected by UPL from the Customer and/or Guarantor/s directly or obtained by UPL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantor/s.
- 19.2 Where the Customer and/or Guarantor/s are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Customer and/or Guarantor/s shall have the right to request UPL for a copy of the information about the Customer and/or Guarantor/s retained by UPL and the right to request UPL to correct any incorrect information about the Customer and/or Guarantor/s held by UPL.
20. **Construction Contract Act 2002**
- 20.1 The Customer hereby expressly acknowledges that:
 - (a) UPL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer; and
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to UPL by a particular date; and
 - (iv) UPL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if UPL suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if UPL exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to UPL under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of UPL suspending work under this provision.
21. **General**
- 21.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 21.3 UPL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by UPL of these terms and conditions.
- 21.4 In the event of any breach of this contract by UPL the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 21.5 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 Customer by UPL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6 UPL may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.7 UPL reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which UPL notifies the Customer of such change.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.9 The failure by UPL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect UPL's right to subsequently enforce that provision.