

PIPE MASTERS

PLUMBING | GAS | DRAINAGE

MT. MAUNGANUI

TERMS AND CONDITIONS

1. Definitions

- 1.1 In these Terms the defined terms have the following meanings:
"Customer" means the person company or entity purchasing Goods and/or Services from PML.
"Goods" means goods sold or to be sold by PML to the Customer in the course of providing the Services.
"PML" means Pipe Masters Limited and includes its successors and assigns.
"PPSA" means the Personal Property Securities Act 1999.
"Services" means all plumbing services provided by PML to the Customer.
"Terms" means these terms and conditions.
"Works" means the work to be undertaken by PML in the course of providing the Services to the Customer.

2. Terms

- 2.1 These Terms (together with any collateral written agreement entered into by the parties) shall apply to and govern the supply of all Goods and Services by PML to the Customer.
2.2 These Terms may only be varied in writing signed by a duly authorised signatory of PML and no other employee, agent or representative of PML shall have any authority to amend, modify or add to these Terms.
2.3 PML reserves the right at any time and from time to time to amend, vary or add to these Terms in the manner set out in clause 2.2 with effect from the date of notification to the Customer.

3. Acceptance

- 3.1 All instructions received and accepted by PML from a Customer for the supply of Goods or Services are subject to and are not binding until their acceptance by PML. Notwithstanding any arrangement granting credit to the Customer, PML reserves the right to accept or decline acceptance of any order in its absolute discretion.
3.2 Any acceptance of an order shall only be conditional acceptance and be subject to PML considering the Customer's credit status with PML. If PML considers that the creditworthiness of the Customer unsatisfactory, it shall be entitled to cancel any order without in any way being liable to the Customer.
3.3 After acceptance by PML no order may be cancelled or amended without the prior approval of PML and then only on the terms specified by PML.
3.4 Where Goods are sold by description or by reference to a sample, PML will use its best endeavours to supply Goods complying with such description or sample, but PML shall not be liable for any variation in the Goods. The quantity, quality and description of, and any specification for, Goods shall be those set out in any PML quotation or the Customer's order as may be applicable provided that PML may make changes to specifications which do not materially affect the quality or performance of Goods.

4. Delivery

- 4.1 PML will endeavour to deliver Goods and Services within any timeframes requested by the Customer, but delivery time shall not be of the essence and PML shall not be liable for any loss to the Customer caused by any delay or non-delivery. PML reserves the right to deliver Goods and Services by instalments and failure by PML to deliver any one or more instalment shall not entitle the Customer to cancel the contract as a whole.

5. Price

- 5.1 PML may charge the Customer by any of the following three means:
(a) Based on an hourly rate (as disclosed to the Customer prior to the commencement of the Works.
(b) In accordance with a quote provided to the Customer prior to the commencement of the Works.
(c) In accordance with an estimate provided to the Customer prior to the commencement of the Works. Such estimate differs from quoted work as it is more likely to fluctuate.
5.2 PML reserves the right to decide on which basis it will invoice the Customer for the provision of Goods and Services.
5.3 For avoidance of doubt, any increases in the cost of supply of the Goods (including without limitation increases in the price of Goods not held in stock by PML or due to variations in exchange rates, the cost of labour, freight, handling or insurance or any duties or taxes) between the date of acceptance of the order and the date of delivery of the Goods shall be borne by the Customer.
5.4 Any discounts or rebates on the price offered by PML are conditional on payment being made on or before due date. If the customer fails to comply with that condition, payment of the full amount of the price shall become immediately due and payable.

6. Payment

- 6.1 At its discretion PML may require payment of a deposit prior to commencement of the Works.
6.2 At its discretion PML may require payment for the Goods and Services by any of the following three means:
(a) Payment on arrival of PML's invoice.
(b) Payment within 7 days of receipt of PML's invoice.
(c) Payment of PML's invoice on the 20th day of the month following the date of invoice.
6.3 In the case of the Customer tendering payment by a cheque, payment shall not have been made until the cheque is honoured on presentment and the moneys payable under it are received in PML's bank account in cleared funds.

Until such time receipt of the cheque shall not prejudice or affect PML's rights or remedies against the Customer or the Goods.

- 6.4 Time is of the essence in respect of the payment obligations of the Customer. If payment is overdue that shall constitute a breach of these Terms and the Customer will upon demand pay to PML interest on any overdue payment at the rate of 12% per annum from the date that payment was due until payment in full is received by PML.
6.5 If payment is overdue PML may in addition to its other remedies cancel or suspend the Customer's entitlement to credit and require payment in cash on or before delivery of any Goods or performance of any Services ordered by the Customer under any contract, or withhold supply of any such Goods or performance of any such services until the Customer has paid or discharged all sums owing to PML.
6.6 PML may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer and it shall not be bound by any terms or qualifications that the Customer may make in relation to payments made under this or any other contract with PML.
- #### 7. Credit Terms
- 7.1 PML reserves the right at its discretion to grant or decline to grant credit to any Customer and to suspend or cancel any credit entitlement with effect from the date of notification to the Customer.
7.2 PML reserves the right to impose a credit limit which may be altered at PML's discretion with effect from the date of notification to the Customer. If the credit limit is at any time exceeded that shall constitute a breach of these terms, PML may, in addition to its other remedies, refuse to accept any further orders from the Customer and/or withhold delivery of any Goods or Services ordered by the Customer under any contract until the breach is remedied to the satisfaction of PML.
7.3 The Customer authorises PML to obtain at any time from any person or entity any information that PML may require for the purpose of assessing the Customer's creditworthiness and the Customer irrevocably authorises and requests all such persons and entities to release to PML any personal information held concerning the Customer. Where the Customer is a natural person then such authority is authority and consent for the purposes of the Privacy Act 1993. The Customer agrees that in the event of its default PML may provide details of that default and personal information relating to the Customer to any credit agency so that such credit agency can maintain effective records.
- #### 8. Guarantee
- 8.1 The Customer shall, if required by PML, arrange for the Customer's liability to be guaranteed by third persons or secured by securities on terms satisfactory to PML. This requirement may be imposed by PML at any time and PML may suspend the Customer's entitlement to credit and/or withhold delivery of any goods ordered by the customer under any contract pending its fulfilment to the satisfaction of PML.
- #### 9. Title
- 9.1 Property in all Goods shall pass to the Customer when the Goods are paid for in cleared funds and all risk of any loss or damage or deterioration in respect of the Goods shall pass to the customer upon delivery to the Customer.
9.2 The Customer grants a security interest over all present and after-acquired goods supplied by PML and their proceeds as security for payment of the price of those Goods and Services.
- #### 10. Repossession
- 10.1 PML may take possession of and sell the goods where any event of default specified in clause 13 occurs or the Goods are at risk (as defined by section 109 of the PPSA and for that purpose it shall have the irrevocable right or licence by its agents servants and employees to enter the premises of the Customer or any other premises where the goods are situated (including any premises, land and buildings that the Customer may enter upon) without being liable in any way to the Customer, and the Customer shall indemnify PML upon demand for all claims by any third party for any losses resulting from PML effecting repossession.
- #### 11. Costs
- 11.1 The Customer will upon demand pay all PML's expenses and legal costs (on a solicitor/agent/client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by these terms or obtaining an order under section 167 of the PPSA or the collection of overdue moneys or the exercise, enforcement or preservation of any right or interest under these terms or any other contract with the Customer.
- #### 12. Demand and Notices
- 12.1 Demand may be made of, or notice given to, the Customer by PML posting, or emailing a letter or invoice to the Customer at the Customer's last known postal or email address, which shall be deemed to be received by the Customer two days after the date of posting of the letter or invoice, and in the case of an email, provided that there PML receives no notification that the email address is invalid.

13. **Default**
- 13.1 PML shall be entitled to suspend or cancel all or any part of the contract recorded in these Terms and/or any other contract or contracts with the Customer, in addition to its other remedies, upon the happening of any of the following events of default:
- (a) if any amounts payable by the Customer to PML are overdue; or
 - (b) if the Customer fails to meet any obligation under these Terms or any other contract with PML; or
 - (c) if the Customer becomes insolvent; or
 - (d) if a receiver or Official Assignee is appointed in respect of the assets of the Customer; or
 - (e) if an arrangement with the Customer's creditors is made or likely to be made; or
 - (f) if the Customer ceases or threatens to cease carrying on business; or
 - (g) if the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered.
- 13.2 Upon cancellation of the contract recorded in these terms all sums owing by the Customer to PML shall become immediately due and payable.
- 13.3 Where any event of default occurs PML may appoint a receiver in respect of all goods (including their proceeds) supplied to the Customer and any such receiver pay take possession of the goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
14. **Claims**
15. Where the Consumer Guarantees Act 1993 ("CGA") applies, the Customer shall have the benefit of all the guarantees and rights and remedies provided under the CGA, but no others. Where the Customer acquires, or holds themselves out as acquiring, the Goods or Services for business purposes, the CGA shall not apply.
16. **Warranties**
- 16.1 It is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of Goods for any particular purpose and no representation, warranty or undertaking in relation to the Goods has been or is made or given by or on behalf of PML in relation thereto. All claims for defective goods must be in writing and delivered to PML together with the Goods in question for inspection by a designated representative of PML within 5 days of receipt of the Goods. All claims must quote the relevant PML invoice number. Any claims not made within five days of receipt will be deemed waived by the Customer.
- 16.2 No guarantee or warranty is given, and no obligation incurred, by PML in respect of Goods or components not manufactured by PML, in respect of which the Customer shall only be entitled to the benefit of any guarantee or warranty given to PML by the manufacturer or supplier provided that PML shall not be required to pay or incur any cost in relation thereto.
- 16.3 All Services are provided in good faith on the basis of the information provided by the Customer. Where PML is requested by the Customer to provide casual advice in conjunction with the sale of Goods but not constituting the formal provision by PML of services then PML shall have no liability whatsoever in relation to any such advice given and the Customer shall rely solely on its own judgment in connection with all such matters. If the Customer alleges defects in PML's workmanship then the Customer shall forthwith after becoming aware of the same notify PML in writing. Failure to so notify PML in writing shall constitute a waiver by the Customer of its rights against PML in respect of any such alleged defect. PML shall have no liability where any Services performed or Goods supplied have been re-installed, modified, not maintained or improperly maintained or improperly used. Any rectification work required to be carried out by PML shall be carried out at a place and at a time stipulated by PML and the Customer shall be responsible for delivering the Goods, as the case may be, to that place by that time.
- 16.4 No guarantee, warranty, representation or statement shall be binding on PML unless made in writing by a director or senior officer of PML. Except as expressly set forth in these Terms, all warranties and conditions, whether implied by law or otherwise, are excluded and PML shall have no liability whatsoever to the Customer. PML shall not be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) even if such loss were reasonably foreseeable or PML had been advised of the possibility of the Customer incurring the same.
17. **Liability**
- 17.1 PML shall have no liability to the Customer in respect of any defect arising from misuse, wilful damage, negligence, failure to follow instructions, unauthorised alteration or modification, abnormal working conditions or fair wear and tear.
- 17.2 PML shall have sole right to decide whether Goods are capable of repair and PML's liability (if any) in respect of Goods shall be limited as follows:
- (a) Where Goods are capable of repair, to the repair of the Goods or the payment of the cost of having the Goods repaired; or
 - (b) where Goods are incapable of repair, to the replacement of the Goods or supply of equivalent goods or the payment of the cost of replacing the Goods or acquiring equivalent Goods.
- 17.3 If it shall be held that PML has any liability to the Customer then the liability of PML to the Customer shall not exceed the value of invoice provided to the Customer by PML in relation to the specific Goods and Services provided to the Customer in question.
- 17.4 PML shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, quotation, invoice, communication or other document or information issued by it.
- 17.5 The Customer agrees to indemnify and hold harmless PML, its directors and employees, from and against any claims, damages, cost and liabilities and expenses (including but not limited to reasonable lawyers' fees) and liability asserted against PML.
18. **Product Disclaimer**
- 18.1 PML takes no responsibility for the warranty, repair, and replacement or any problem resulting where by a product, fixture, tap or fitting supplied by the client. Such product may be installed by PML as per the manufacture instruction but any fault, malfunction or manufacturer's warranty issue is the sole responsibility of the Customer. Any labour and/or materials required in any rectification work will be charged to the Customer as an extra. Should the Customer wish to claim the costs, the Customer must first pay PML's invoice, following which the Customer can claim reimbursement from the importer, wholesaler or other third party as the case may be.
19. **PPSA**
- 19.1 The Customer will provide such information and do such acts and execute such further documents as in the opinion of PML may be necessary or desirable to enable PML to perfect under the PPSA the security interest created by these Terms (and in particular clause 9) as a first priority interest or with such other priority as PML may agree in writing.
- 19.2 PML may do all things which it thinks desirable to remedy any default by the Customer or otherwise protect the Goods or the security interest created by these Terms.
- 19.3 The Customer irrevocably appoints PML to be the Customer's attorney to do anything which the Customer agrees to do under these Terms and anything which the attorney thinks desirable to protect PML's interests under these Terms and the Customer ratifies anything done by an attorney under this clause 18. The Customer agrees sections 114 (1) (a), 133 and 134 of the PPSA shall not apply to these Terms or the security under these Terms.
- 19.4 The Customer waives the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms.
- 19.5 The Customer agrees that none of the Customer's rights as debtor under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132 and 133 of the PPSA shall apply to these Terms.
- 19.6 The Customer also agrees, where PML has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 19.7 The Customer must not change the Customer's name without first notifying PML of the new name not less than 7 days before the change takes effect.
- 19.8 The Customer must not allow or permit the creation of a lien over any of the Goods.
20. **Miscellaneous**
- 20.1 New Zealand law governs these Terms and New Zealand Courts have non-exclusive jurisdiction.
- 20.2 These Terms remain in force notwithstanding any neglect, forbearance or delay in enforcement. PML shall not be deemed to have waived any term or condition unless such waiver shall be in writing and signed by a director of PML and any such waiver shall apply only to the particular transaction to which it refers.
- 20.3 If any clause or provision of these Terms shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.
- 20.4 The Client may not may assign or transfer any of its rights under these Terms without the prior written consent of PML.
- 20.5 If either party is unable by reason of a force majeure event (being events or circumstance beyond that party's reasonable control) to carry out any obligation under these Terms, it shall promptly notify the other party and:
- (a) If no resolution can be found the obligation of the party claiming force majeure shall be suspended during the time and to the extent that the party is prevented from or delayed in complying with the obligation; and
 - (b) The party claiming force majeure shall use reasonable endeavours to remove or mitigate such force majeure at the earliest possible time and shall notify the other party of the expiry of the period as soon as possible.
- 20.6 For avoidance of doubt, the Construction Contracts Act 2002 applies to the relationship between PML and the Customer.

The above terms are accepted by the Customer:

Name of Signatory (please print): _____ Signature: _____

Position of Signatory (please print): _____ Date: _____

