

Gas & Plumbing Services Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "Contractor" means Gas & Plumbing Services Ltd, its successors and assigns or any person acting on behalf of and with the authority of Gas & Plumbing Services Ltd.
- 1.2 "Customer" means the person/s buying the Materials (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Materials" means all Materials or Works supplied by the Contractor to the Customer at the Customer's request from time to time (where the context so permits the terms 'Materials' or 'Works' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Contractor to the Customer (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Customer.
- 1.5 "Price" means the Price payable for the Materials as agreed between the Contractor and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Materials/Equipment.
- 2.2 These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor.
- 2.3 In the event that the Contractor is required to provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Customer.

3. Change in Control

- 3.1 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 At the Contractor's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Customer; or
 - (b) the Contractor's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, discovery of asbestos, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
- 4.3 At the Contractor's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Materials/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Materials/Equipment;
 - (b) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
 - (c) for certain approved Customer's, 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;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Contractor.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Materials/Equipment

- 5.1 Delivery (“**Delivery**”) of the Materials/Equipment is taken to occur at the time that the Contractor (or the Contractor’s nominated carrier) delivers the Materials/Equipment to the Customer’s nominated address even if the Customer is not present at the address.
- 5.2 At the Contractor’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Materials/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Materials as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Subject to clause 5.5 it is the Contractor’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.5 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor’s control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Contractor that the site is ready.
- 5.6 The Contractor may deliver the Materials/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.7 Any time or date given by the Contractor to the Customer is an estimate only. The Customer must still accept delivery of the Materials/Equipment even if late and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Equipment Hire

- 6.1 Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Contractor shall have right to charge the Customer the full cost of replacing the Equipment.
- 6.2 The Customer shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Customer.
- 6.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the Contractor’s interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

7. Risk

- 7.1 Risk of damage to or loss of the Materials passes to the Customer on Delivery and the Customer must insure the Materials on or before Delivery.
- 7.2 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor’s rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 7.3 If the Customer requests the Contractor to leave Materials outside the Contractor’s premises for collection or to deliver the Materials to an unattended location then such Materials shall be left at the Customer’s sole risk.
- 7.4 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.
- 7.5 The installation of some appliances can cause water hammer or damage to existing pipe work. The Customer agrees to indemnify the Contractor against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.
- 7.6 In the event that the Contractor discovers asbestos/hazardous materials whilst undertaking any works the Contractor shall immediately advise the Customer of the same and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs (howsoever arising) incurred by the Contractor as a result of the discovery of asbestos/hazardous materials and/or any suspension of works in relation thereto.

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7.7 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Customer or the Customer's agent.

8. Access

8.1 The Customer shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the works. The Contractor 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 the Contractor.

9. Hidden Mains & Works

9.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all hidden mains, pipes and services on the site and clearly mark the same. The hidden 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.

9.2 Whilst the Contractor will take all care to avoid damage to any hidden services the Customer agrees to indemnify the Contractor 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 9.1.

10. Title To Materials

10.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:

- (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
- (b) the Customer has met all of its other obligations to the Contractor.

10.2 Receipt by the Contractor 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.

10.3 It is further agreed that:

- (a) until ownership of the Materials passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Materials and must return the Materials to the Contractor on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (d) the Customer should not convert or process the Materials or intermix them with other Materials but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (e) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
- (f) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
- (h) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

11. Personal Property Securities Act 1999 ("PPSA")

11.1 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 Materials/Equipment previously supplied by the Contractor to the Customer (if any) and all Materials/Equipment that will be supplied in the future by the Contractor to the Customer.

11.2 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 the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials/Equipment charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Contractor; and
- (d) immediately advise the Contractor of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.

11.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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11.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 11.1 to 11.5.

12. Security and Charge

12.1 In consideration of the Contractor agreeing to supply the Materials/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

12.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.

12.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

13. Customer's Disclaimer

13.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Contractor and the Customer acknowledges that the Materials are bought relying solely upon the Customer's skill and judgment.

14. Defects

14.1 The Customer shall inspect the Materials/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Materials/Equipment within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials/Equipment shall be presumed to be free from any defect or damage. For defective Materials/Equipment, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Materials/Equipment or repairing the Materials/Equipment.

14.2 Materials/Equipment will not be accepted for return for any reason other than those specified in clause 14.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein).

15. Returns Of Materials

15.1 Returns of Materials will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 14.1; and
- (b) the Contractor has agreed in writing to accept the return of the Materials; and
- (c) the Materials are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Contractor will not be liable for Materials which have not been stored or used in a proper manner; and
- (e) the Materials 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.

16. Warranty

16.1 Subject to the conditions of warranty set out in Clause 16.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within ninety (90) days of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

16.2 The conditions applicable to the warranty given by Clause 16.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Materials; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
 - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.

(c) in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

16.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor 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 Materials.

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16.4 To the extent permitted by statute, no warranty is given by the Contractor as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

16.5 In the case of second hand Materials, 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 the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

17. Consumer Guarantees Act 1993

17.1 If the Customer is acquiring Materials 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 Materials by the Contractor to the Customer.

18. Intellectual Property

18.1 Where the Contractor has designed, drawn or developed Materials/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Contractor.

18.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

18.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Materials which the Contractor has created for the Customer.

19. Default and Consequences of Default

19.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).

19.3 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Materials/Equipment to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.

19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;

(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.

20. Dispute Resolution

20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

21. Compliance with Laws

21.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

21.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

21.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

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- 21.4 Prior to commencement of any Works the Contractor shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipe work. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
- 21.5 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance maybe subject to fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assembles any costs associated with such an event shall be borne by the Customer.
- 21.6 The Customer warrants that any existing plumbing, gasfitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. The Contractor reserves the right to halt all Works if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Contractor will charge a standard fee for the time spent on worksite based on the Contractor's quotation.

22. Cancellation

- 22.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials/Equipment at any time before the Materials/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for either the Materials or Equipment hire. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 In the event that the Customer cancels delivery of the Materials/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3 Cancellation of orders for Materials made to the Customer's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Privacy Act 1993

- 23.1 The Customer authorises the Contractor to:
- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - (b) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor 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.
- 23.2 Where the Customer is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Customer shall have the right to request the Contractor for a copy of the information about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect information about the Customer held by the Contractor.

24. Unpaid Contractor's Rights

- 24.1 Where the Customer has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any moneys owing to it by the Customer, the Contractor shall have, until all moneys owing to the Contractor are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Materials.
- 24.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Contractor having been obtained against the Customer.

25. Construction Contract Act 2002

- 25.1 The Customer hereby expressly acknowledges that:
- (a) the Contractor 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 the Contractor by a particular date; and
 - (iv) the Contractor has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Contractor suspends work, it:
 - (v) is not in breach of contract; and

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- (vi) 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
 - (vii) is entitled to an extension of time to complete the contract; and
 - (viii) 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 the Contractor exercises the right to suspend work, the exercise of that right does not:
- (ix) affect any rights that would otherwise have been available to the Contractor under the Contractual Remedies Act 1979; or
 - (x) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Contractor suspending work under this provision.

26. General

- 26.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. 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.
- 26.2 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.
- 26.3 The Contractor 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 the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Materials/Equipment hire).
- 26.4 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 the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 26.5 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 26.6 The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide Materials/Equipment to the Customer.
- 26.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Note: The above Terms and Conditions of Trade are for Customers who use the services of
Gas & Plumbing Services Ltd
92 Old Taupo Road,
Rotorua.

**When paying your account by mail or over the internet,
Please supply your Client Code
or
Invoice Number with the payment. *Thank You.***