

SODA PLUMBING AND GAS LIMITED – TERMS OF TRADE

1. AGREEMENT

1.1 By accepting a quote or estimate issued by Soda Plumbing and Gas Limited (**Us/We/Our**) or where you engage Us to provide plumbing services and materials or where you contact Us for urgent callout work (**Works**), you the customer (**You/Your**) agrees to these terms of trade (**Agreement**). If You are not a person, the person accepting the quote, estimate or otherwise engaging Us warrants they are authorised to accept these terms and conditions on Your behalf. To the extent that any terms and conditions set out in Our quote or estimate conflict with this Agreement, the quote or estimate shall prevail.

2. WORKS

2.1 **Works:** We will complete the Works in accordance with the specifications set out in Our quote or estimate, subject to variation pursuant to clause 3.

2.2 **Materials:** Unless We agree otherwise, We will source and supply all materials necessary to complete the Works. In the event You supply any materials We are not responsible in any way for such materials or their quality.

2.3 **Estimated Dates:** We will endeavour to commence the Works, and to use reasonable endeavours to complete the Works, in accordance with the applicable dates set out in Our quote or estimate. These dates are estimates only, and at all times subject to clause 2.4. If no dates are specified, then We will commence and complete the Works within a reasonable time.

2.4 **Delays:** We will not be responsible for any delays in the commencement or completion of the Works that have arisen from any weather event or conditions, unavailability of materials, labour, or contractors, variation, strike, lockout or other industrial action, pandemic or epidemic, loss or damage to the Works or materials, flood, fire, volcanic, or seismic events, or any other event or cause beyond Our reasonable control (**Force Majeure Event**). If a Force Majeure Event occurs which affects the commencement or completion dates of the Works, We will notify You.

2.5 **Specific Requirements:** For the purpose of undertaking the Works, You agree to do the following, at Your cost:

- (a) allow Us reasonable access to the site where the Works are to be undertaken (**Site**) to complete the Works;
- (b) provide an electricity and water supply for Us to use while undertaking the Works;
- (c) where required, locate and advise Us of any and all relevant underground or overhead services; and
- (d) comply with Our reasonable instructions issued from time to time.

2.6 **Subcontractors:** We may subcontract all or part of the Works to one or more subcontractors in Our sole discretion. We will be responsible for ensuring that Our subcontractors comply with this Agreement.

2.7 **Preferred subcontractors:** We will use reasonable endeavours to work alongside any contractors that You appoint, in a co-operative manner. We are not responsible for materials or services provided by any contractors that You appoint, or their insurance.

2.8 **Insurance:** We will endeavour to maintain, for the duration of the Works, public liability insurance to the amount a reasonable and prudent plumber would consider sufficient in respect of the Works. It is Your responsibility to take out contract works insurance if You require it.

2.9 **Consents:** It is your responsibility to obtain all necessary building consents or any other consents whatsoever necessary for the completion of the Works.

3. VARIATIONS

3.1 **Agreed variations:** Either party may propose a variation to the Works which will only have effect if it is agreed to by the other party.

3.2 **Our variations:** In addition, We may vary the Works to the extent necessary, as determined by Us in Our sole discretion as follows:

- (a) to deal with any emergency that reasonably requires additional works to be undertaken to preserve, protect or mitigate damage to the materials, property, partly completed Works or people;
- (b) to use substitute alternative materials, finishes, products or systems provided they are not of materially lesser quality, in Our opinion, than those intended to be used for the Works;
- (c) to enable the efficient, prudent and diligent completion of the Works;
- (d) to comply with the requirements of any Consents, local authority, or applicable law;
- (e) due to the availability of any materials, labour or subcontractors;
- (f) increase in the price of materials, labour or subcontractors; or
- (g) due to factors beyond Our reasonable control.

3.3 **Unexpected circumstances:** If before or after commencing the Works, We discover, or become aware of, any situation or circumstance where:

- (a) the scope of the Works is likely to be bigger than what Our quote or estimate is based on;
- (b) the Works are not reasonably able to be progressed or completed in accordance with Our quote or estimate;
- (c) the Works will not comply with applicable law, conditions in respect of a Consent, or any warranty contemplated by clause 7; or
- (d) any assumptions that our quote or estimate for the Works is based on are incorrect,

then We may immediately suspend the Works, and discuss the matter with You. We will not be required to recommence the Works until a variation has been agreed pursuant to clause 3.1 or We agree otherwise. If no variation can be agreed within 3 days of the date of suspension, We may terminate this Agreement, and issue an invoice for all work completed on a time and materials basis, in accordance with our standard rates and prices which may be amended from time to time (**Standard Rates**).

4. PRICE AND PAYMENT

4.1 **Validity:** Our quotes and estimates will remain valid for 30 days following the date of issue, unless We agree otherwise. If a quote or estimate has expired, please contact Us to confirm the pricing.

4.2 **Estimates:** Estimates are our reasonable estimate of the price to complete the Works, based on the information available to us at the time we complete the Estimate. The actual price for the Works will be calculated in accordance with our Standard Rates, including without limitation in relation to any urgent callout Works.

4.3 **Deposit:** If We require payment of a deposit, We will have no obligation to commence the Works until the deposit has been paid. We may retain the deposit as a payment bond, until the Works are complete or this Agreement is terminated (whichever is earlier), and We will offset the deposit against Our final invoice on completion of the Works. We may also apply the deposit to payment of any unpaid invoice. The deposit is non-refundable.

4.4 **Price:** Subject to a variation, the price payable for the Works will be as specified in the quote, or where no quote has been issued in relation to the Works, the price payable will be calculated at Our Standard Rates (**Price**).

4.5 **Variation pricing:** A variation to the Price may be agreed by the parties as part of a variation pursuant to clauses 3.1 or 3.2, or

where no Price variation is so agreed, the variation shall be calculated in accordance with Our Standard Rates.

4.6 **GST:** All amounts set out in Our quote, estimates and invoices are plus GST, unless expressly stated otherwise.

4.7 **Invoices:** If we have issued a quote or estimate, We will issue invoices to You for the amounts and in accordance with the timing specified in our quote or estimate. If our quote or estimate doesn't have invoice timing specified, We will issue invoices weekly. If our quote or estimate doesn't have specific invoice amounts specified, each invoice will be for the proportion to the Price that corresponds with the proportion of the Works completed since our last invoice, or where We haven't previously issued an invoice, since We started the Works. If Our estimate doesn't have invoice amounts specified, Our invoices will be for the value of the Works, calculated in accordance with Our Standard Rates, completed since Our last invoice, or where We haven't previously issued an invoice, since We started the Works. We may, in addition to invoices, issue payment claims in accordance with the Construction Contracts Act 2002. If You dispute the content of a payment claim, You must issue a payment schedule within 7 days of your receipt of the payment claim.

4.8 **Payment:** You agree to pay the amounts specified in each invoice issued by Us to the bank account specified in each invoice, or as otherwise nominated by Us, within seven days of the date of the invoice. All payments shall be made without deduction or set off, and We can allocate payments in our discretion.

4.9 **Payment Default:** If You fail to pay any amount on or prior to the applicable due date for payment, or are otherwise in breach of this Agreement, We may, in Our sole discretion, without prejudice to any other rights and remedies, do any one or more of the following:

- (a) suspend the provision of the Works and the operation of this Agreement;
- (b) if payment is not made within five days of Our written demand, terminate (in whole or in part) this Agreement;
- (c) remove any tools, materials or any other property owned by Us from the Site;
- (d) charge interest at a rate of 10% per annum on the amount owing, calculated on a daily basis, from the applicable due date for payment until We receive payment in full;
- (e) enforce or give effect to any security,
- (f) appoint a receiver over You;
- (g) take legal or other action to recover the amounts owing and/or appoint a collections agent or other third party to collect the amounts owing; and/or
- (h) claim, and You shall reimburse us for all costs and expenses (including legal costs as between solicitor and client) associated with Your default or taking any action described above in addition to any amount You owe to Us.

5. TITLE AND SECURITY

5.1 **Title:** Title to any materials supplied by Us in the course of completing the Works will not pass to You until You have paid the Price in full. You grant Us a security interest in all of the materials supplied as part of the Works, and all of Your present and after acquired property, to secure Your payment and other obligations pursuant to this Agreement. Any materials supplied by Us shall not become affixed to the Site or any land until such time as title has transferred to You.

5.2 **Risk:** Risk in all materials supplied by Us transfers to You on delivery to the Site.

5.3 **Cooperation and waiver:** You agree to, if required by Us:

- (a) co-operate in good faith with Us to execute the documentation required to register a security interest in favour of Us on the Personal Property Securities Register and protect Our interest in the materials; and
- (b) waive any right to receive a copy of the verification statement, pursuant to section 148 of the New Zealand Personal Property Securities Act 1999.

5.4 **Equitable Mortgage:** To secure Your payment of the Price and other obligations set out in this Agreement, You agree to grant Us, immediately upon request, a mortgage (within the meaning of the Property Law Act 2007) over Your land which contains the Site, or where You do not own the Site, then any other land that You own, selected by Us (**Land**). You acknowledge that as soon as a request is made, We will acquire an equitable mortgage over the Land in respect of which We may lodge a caveat, with such equitable mortgage to contain the covenants, conditions, provisions and powers as are usually inserted in an all obligations Auckland District Law Society mortgage.

6. TERMINATION

6.1 **Mutual Termination:** Either party may terminate this Agreement by providing seven days' notice in writing to the other party. If notice of termination is provided by either party, We may suspend the Works.

6.2 **Termination with cause:** A party may terminate this Agreement immediately if:

- (a) the other party commits, or in its reasonable opinion is likely to commit, a breach of the terms and conditions of this Agreement and such breach, if capable of remedy, is not remedied to the satisfaction of the notifying party within five days of receipt by the breaching party of written notice of such breach from the notifying party; or
- (b) the other party to this Agreement enters into administration, receivership or liquidation, reasonably appears to be insolvent or unable to pay its due debts.

6.3 **Effect of termination:** If this Agreement is terminated:

- (a) We will issue You with a final invoice;
- (b) all invoices issued, including the final invoice, shall become immediately due and payable;
- (c) We may remove all tools, materials and other property owned by Us from the Site, and You agree to grant Us access for this purpose;
- (d) We shall have no further obligation to complete the Works; and
- (e) such termination shall be without prejudice to any rights and/or obligations of the parties existing at the time of termination.

7. WARRANTIES AND LIABILITY

7.1 **Purpose:** Unless expressly set out in Our quote or estimate, the Works are not for a particular purpose, or to achieve a particular result.

7.2 **Manufacturer warranties:** We will use reasonable endeavours to pass on any manufacturer warranty that relates to the materials to You, if applicable. For the avoidance of doubt, We do not, to the extent permitted by law, give any warranty in respect of any materials or other products manufactured by a third party in addition to any Consumer Rights (defined below) You have (if applicable). We will provide reasonable assistance where You wish to make a claim against a manufacturer's warranty in respect of the materials.

7.3 **Warranty claims and defects:** If You wish to make a claim for breach of warranty or defect, please provide all information in relation to the claim to Us in writing for our consideration.

Without limitation, defects do not include minor or cosmetic blemishes, flaws within normal tolerances, a higher standard of finish than specified in Our quote or estimate, or damage caused by someone other than Us or Our subcontractors. We may request, and You shall allow Us, to inspect the Works that are the subject of the claim. We will notify You in writing as to whether the claim is accepted or declined. If the claim is accepted, We may choose to repair or replace the applicable part of the Works at Our cost within a reasonable time, or issue a refund for the applicable part of the Price. To the extent permitted by applicable law, this shall be Your exclusive remedy in relation to a breach of warranty or defect remedy.

7.4 **Consumer Legislation:** If You are a consumer (as defined in the Consumer Guarantees Act 1993), then We will comply with all implied warranties set out in Part 4A of the Building Act 2004 and the Consumer Guarantees Act 1993, to the extent that they apply to the Works (**Consumer Rights**).

7.5 **Consumer Rights:** Where You are a consumer your Consumer Rights are not affected by clause 7.7 including Our limitations of liability set out in that clause. You may have other rights in addition to the Consumer Rights, however such other rights are, to the extent permitted by applicable law, subject to the limitations of liability set out in clause 7.7 (**Other Rights**).

7.6 **Exclusions:** If You are in trade and We are providing the Works to You for a business purpose (**Business Customer**), then You agree, to the extent permitted by applicable law:

- (a) that the implied conditions and warranties set out in the Consumer Guarantees Act 1993 and the Building Act 2004 are excluded; and
- (b) except as expressly set out in this Agreement, the materials and services provided by Us are provided on an 'as is' basis, and all implied terms, conditions and warranties are excluded.

7.7 **Liability:** The following limitations and exclusion of liability apply in respect of a Business Customer and in respect of any Other Rights You may have:

- (a) We will not be liable to You whatsoever for any matter that We have excluded liability for within this Agreement, any indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages suffered by either party or any other person, loss arising out of or flowing from any pre-contractual misrepresentation, forecast or breach of this Agreement, whether contemplated by this Agreement or not, and whether actionable in contract, tort (including negligence), equity or otherwise.
- (b) If notwithstanding clause 7.7(a), We are found liable to You or any third party for any loss or damage, however caused (including through negligence), Our maximum liability to You in aggregate will be limited to the greater of the Price for the Works or \$1,000.

7.8 **Indemnity:** Where You are a Business Customer, You agree to indemnify and keep Us indemnified against all loss, damages, costs (including, without limitation, loss of profits) and expenses of any kind, whether direct or indirect, which arise from or in connection with Your breach of these Terms, whether in tort, contract, equity or otherwise.

8. HEALTH AND SAFETY

8.1 **Act:** We acknowledge Our obligations pursuant to the Health and Safety At Work Act 2015 (**H&S Act**).

8.2 **Obligations:** You shall:

- (a) comply with the H&S Act, regulations, and Our health and safety policy and procedures as advised from time to time;

- (b) comply with any reasonable instruction that is given by Us to allow Us to comply with the H&S Act, regulations, or Our health and safety policy and procedures;
- (c) take reasonable care of Your own health and safety while at the Site;
- (d) take reasonable care that Your acts or omissions do not adversely affect the health and safety of other persons at the Site;
- (e) ensure that any worker (as that term is defined under the H&S Act) entering the Site complies with the H&S Act and regulations, including any other contractors that you may appoint;
- (f) notify Us immediately of any notifiable illness or injury, notifiable incident notifiable event, or hazard (as those terms are defined under the H&S Act) at the Site and comply with their own notification requirements to WorkSafe New Zealand or any other relevant authority;
- (g) notify Us as soon as is reasonably practicable of any accident or near miss at the Site falling outside of the immediately notifiable instances in sub-clause (f) above; and
- (h) follow best practice in respect of health and safety.

8.3 **Joint health and safety obligations:** Where the parties have a duty in relation to the same matter imposed by or under the H&S Act, the parties shall, so far as is reasonably practicable, consult, co-operative with, and co-ordinate activities with each other.

9. MISCELLANEOUS

9.1 **Privacy:** You agree that we may collect, use and disclose your personal information for purposes related to your dealings with us including but not limited to undertaking the Works, direct marketing, social media and provision of information about the Services. You have rights under the Privacy Act 2020 to access any personal information that we hold and to request the correction of such personal information. In addition you consent to us providing electronic marketing messages to you, unless you opt out by notifying us in writing or unsubscribing.

9.2 **Entire Agreement:** This Agreement constitutes the entire Agreement and supersedes and extinguishes all prior agreements and understandings, written or oral, between the parties. In the event of any conflict or inconsistency between this Agreement and the provisions of any document used by You or any other arrangement between the parties, this Agreement prevails unless otherwise agreed in writing and signed by the parties.

9.3 **Dispute resolution:** In the event of any dispute between the parties in relation to this Agreement, the parties shall first seek to resolve such dispute by promptly giving notice of such dispute to all other parties (**Dispute Notice**) and cooperatively endeavouring to resolve such dispute. If the dispute remains unresolved within 10 days after the date that the last party was provided with a Dispute Notice, the parties shall then seek a resolution through the use of mediation prior to seeking resolution through the Courts. We may suspend the provision of the Works if a dispute is raised. This clause is without prejudice to a party's right to seek adjudication under the Construction Contracts Act 2002.

9.4 **Notices:** Notices, communications, documents or demands required to be made or served pursuant to this Agreement shall be in writing and signed by the party giving the notice. Notices shall be sent to the applicable party's registered address, address set out in a quote or estimate which may be updated from time to time by a party by sending written notice to the other parties. Any notice or document shall be deemed to be duly given or made if delivered by hand, when so delivered; if sent by post, on the fifth working day following posting; if communicated by email, when transmitted to the recipient's last known facsimile

number and/or email address, provided that the sender does not receive any indication of incomplete transmission.

9.5 **Force majeure:** In addition to clause 2.4, should a Force Majeure Event exceed 10 days, either party may terminate the Agreement by providing a written notice to the other party.

9.6 **Waiver:** A party will not have waived or be deemed to have waived any provision of this Agreement unless such waiver is in writing and signed by that party.

9.7 **Severability:** If any provision of this Agreement is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation. If it cannot be so read down, that

provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

9.8 **Governing Law:** This Agreement is to be interpreted in accordance with and governed by the laws of New Zealand and subject to clause 9.3 the parties submit to the non-exclusive jurisdiction of the NZ Courts.

9.9 **Non-Circumvent:** The parties will not circumvent or attempt to circumvent the provisions and/or intent of this Agreement.

9.10 **Counterparts:** This Agreement may be executed in counterparts (which may be electronic copies) and all of which, when taken together constitute the one document.