

**1. Definitions**

- 1.1 “MPL” means Moods Plumbing Limited, its successors and assigns or any person acting on behalf of and with the authority of Moods Plumbing Limited.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting MPL to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works or Materials supplied by MPL to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between MPL and the Client in accordance with clause 6 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and MPL.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 If MPL has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.5 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available or if Client supplied materials are not compliant with current NZ Building Code standards, MPL reserves the right to substitute with comparable Materials (or components of the Materials) and vary the Price as per clause 6.2, subject to prior confirmation and agreement of both parties. In all such cases MPL will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order on hold until such time as MPL and the Client agree to such changes.
- 2.6 If MPL has been requested by the Client to prepare a quotation that involves multiple site visits or third party involvement (including but not limited to engineers, surveyor or local councils), all costs involved will be charged to the Client irrespective of whether or not the Works go ahead.
- 2.7 Prior to the commencement of the Works, the Client will be provided with a Pre-Stage Checklist, which is to be signed and returned to MPL before work can begin.

**3. Errors and Omissions**

- 3.1 The Client acknowledges and accepts that MPL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MPL in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by MPL in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of MPL; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Authorised Representatives**

- 4.1 The Client acknowledges that MPL’s staff exclusively shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to MPL, that person shall have the full authority of the Client to order any Works, and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to MPL for all additional costs incurred by MPL (including MPL’s profit margin) in providing any Works, or variation/s requested thereto by the Client’s duly authorised representative.

**5. Change in Control**

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

**6. Price and Payment**

- 6.1 At MPL’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by MPL to the Client in respect of Works performed or Materials supplied; or
  - (b) MPL’s quoted Price (subject to clause 6.2) which shall be binding upon MPL provided that the Client shall accept MPL’s quotation in writing within thirty (30) days.
- 6.2 MPL 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) if during the course of the Works, the Materials are not or cease to be available from MPL’s third party suppliers or if Client supplied materials are not compliant with current NZ Building Code standards, then MPL reserves the right to provide alternative Materials (or components of the Materials); or
  - (d) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work, health hazards and safety

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- considerations (such as the discovery of asbestos, rot or other toxic materials), plant tree root growth, latent soil conditions, high water table, prerequisite work by any third party not being completed or not code compliant, hard rock barriers below the surface, or hidden or damaged pipes, etc.) which are only discovered on commencement of the Works; or
- (e) in the event of increases to MPL in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond MPL's control.
- 6.3 Variations will be charged for on the basis of MPL's quotation, and will be detailed in writing, and shown as variations on MPL's invoice. The Client shall be required to respond to any variation submitted by MPL within ten (10) working days. Failure to do so will entitle MPL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At MPL's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by MPL, which may be:
- (a) before commencement of the Works and/or delivery of the Materials; or
  - (b) on completion of the Works; or
  - (c) by way of progress payments in accordance with MPL's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed. If the Client defaults in any progress payment, MPL reserves the right to halt the Works in accordance with clause 7.2 until payment is received;
  - (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 Client by MPL.
- 6.6 Payment may be made by bank cheque, electronic/on-line banking, eftpos, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and MPL.
- 6.7 No allowance has been included within the quotation for Works to be carried out outside of MPL's normal working hours.
- 6.8 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the retention money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Monies applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by MPL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to MPL an amount equal to any GST MPL must pay for any supply by MPL under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
- 7. Provision of the Works**
- 7.1 Subject to clause 7.2 it is MPL's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that MPL claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond MPL's control, including but not limited to forecast weather conditions (including without limitation, extreme temperatures) or any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify MPL that the site is ready as per clause 2.7.
- 7.3 The Client acknowledges and accepts that where the Client wishes to postpone the Works that MPL must be notified within two (2) business day of the proposed commencement date as agreed to between both parties. Where such notice is received inside this timeframe, MPL reserves the right to charge a reasonable fee for the delay in the commencement of the Works.
- 7.4 Where the Works are commenced and then delayed by the Client for a period greater than six (6) months, then payment for the Works must be made in full if not already done so and MPL shall reserve the right to requote for the remainder of the Works outstanding.
- 7.5 At MPL's sole discretion the cost of delivery is in addition in the Price (including any travel cost associated with pickup and delivery of any third party sourced materials at the Client's request).
- 7.6 Where the delivery location is more than twenty-five metres (25m) from the worksite, then additional cost may be charged by MPL to the Client for moving Materials and/or other items to the worksite.
- 7.7 MPL may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.8 Any time specified by MPL for delivery of the Works is an estimate only and MPL will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that MPL is unable to supply the Works as agreed solely due to any action or inaction of the Client, then MPL shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Risk**
- 8.1 If MPL retains ownership of the Materials under clause 9 then:
- (a) where MPL is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at MPL's address; or
    - (ii) the Materials are delivered by MPL or MPL's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

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- (b) where MPL is to both supply and install Materials then MPL shall maintain appropriate insurance cover (where applicable) until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests MPL to leave Materials outside MPL's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing, cracked, broken and/or blocked drains, or latent or unfavourable soil conditions such as liquefaction residue or risk) that MPL, or MPL employees, reasonably form the opinion that the Client's premises is not safe for the Works to proceed then MPL shall be entitled to delay the provision of the Works (in accordance with clause 7.2) until MPL is satisfied that it is safe for the installation to proceed. MPL may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation (as per clause 6.2) and will be charged for in addition to the Price.
- 8.4 In the event asbestos, rot or any other toxic substances are discovered at the site, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify MPL against any costs incurred by MPL as a consequence of such discovery. Under no circumstances will MPL handle removal of asbestos product or any other toxic substances.
- 8.5 MPL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, MPL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 The Client acknowledges and agrees that where MPL has performed temporary repairs that:
- (a) MPL offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) MPL will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 8.7 Where MPL gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Works (including but not limited to, a particular course of action, product selection or the condition of materials supplied by the Client being inferior or not up to NZ Building Code standards), and such advice or recommendations are not acted upon, then MPL shall require the Client or their agent to authorise commencement of the Works in writing. MPL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works nor will such losses or damages be deemed a defect. If:
- (a) MPL substitute inferior and/or non-compliant Client supplied materials with alternate Materials, this will be in addition to the Price in accordance with clause 6.2; and
  - (b) the Client instructs MPL to rectify any damage or defects, this will become a variation to the original quotation and will be charged at MPL normal hourly rate.
- 8.8 Where MPL requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply MPL a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 8.9 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where MPL is requested to merely clear such blockages, MPL can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, MPL will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 8.10 In the event that the Client requests MPL to use drain/pipe unblocking equipment, and MPL does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, MPL may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 8.11 The Client acknowledges that:
- (a) MPL is only responsible for parts that are repaired by MPL and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and/or found to be the source of the failure;
  - (b) where the Client has supplied materials for MPL to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials; and
  - (c) MPL shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b) applies.
- 8.12 MPL shall not be liable whatsoever for:
- (a) any loss or damage to the Works that is caused by any other tradesmen during and after the completion of the Works; or
  - (b) delays caused by any other third party suppliers that impacts on the provision of the Works by MPL;
  - (c) materials and/or works supplied by the Client and/or any other third party; and
  - (d) if the Client instructs MPL to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at MPL normal hourly rate; and
  - (e) any associated damages caused by the Client's failure to adhere to the Client's Responsibility Sheet as provided by MPL; and
  - (f) delays, damages or cost incurred by MPL through the Client's failure to comply with clause 8.13.
- 8.13 The Client acknowledges that they shall:
- (a) provide and have erected scaffolding to enable the Works to be undertaken (where in MPL's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed. In the event the Client fails to provide the scaffolding or it is not code compliant and the responsibility then falls onto MPL, the costs associated will be added as an extra in accordance with clause 6.2;
  - (b) remove any furniture or personal items from the vicinity of the Works, and agrees that MPL shall not be liable for any damage caused to those items through the Client's failure to comply with this clause and may charge for removal if required;
  - (c) be wholly responsible for animals and/or children on the worksite;

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(d) be wholly responsible for the removal of rubbish (including but not limited to contaminated soil stockpiling of excess spoil) from or clean-up of the building/constructions site/s. Failure of the Client to adhere to this clause and the responsibility falls on MPL, all cost associated will be on charged to the Client;

(e) provide access to power, toilet, waste disposal amenities, running water, eating and first aid facilities, if required.

### 9. Access

9.1 The Client shall ensure that the site is made available, and that MPL has clear, unobstructed and free access to the site at all times to enable them to undertake the Works. MPL 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 MPL.

### 10. Underground Locations

10.1 Prior to MPL commencing any work the Client must advise MPL of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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.

10.2 Whilst MPL will take all care to avoid damage to any underground services the Client agrees to indemnify MPL 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 10.1.

### 11. Compliance with Laws

11.1 The Client and MPL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities, and New Zealand Building Code Standards that may be applicable to the Works, including any WorkSafe guidelines and the Health and Safety at Work Act 2015 relating to building/construction sites and any other relevant safety standards or legislation.

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

11.3 Prior to commencement of any Works MPL shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery MPL where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.

11.4 The Client acknowledges that in instances where the gas supply is turned off at the meter or bottles by MPL in order to carry out the soundness test that parts within a gas appliance may 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 assemblies. Any costs associated with such an event shall be borne by the Client.

11.5 The Client warrants that any existing plumbing, and/or associated services in or upon the site that is subject to the Materials and/or Works is in compliance with regulations. MPL reserves the right to halt all Works (in accordance with clause 7.2) if in their opinion the site is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client 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 or resolve the problematic situation. Should the Client not wish to proceed MPL will charge a standard fee for the time spent on site based on MPL's quotation.

11.6 MPL has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, MPL shall not be the person who controls the place of work in terms of the HSW Act.

### 12. Surplus Materials

12.1 Unless otherwise stated elsewhere in this contract:

(a) demolished Materials remain the Client's property; and

(b) Materials which MPL brings to the site which are surplus remain the property of MPL.

### 13. Title

13.1 MPL and the Client agree that ownership of the Materials shall not pass until:

(a) the Client has paid MPL all amounts owing to MPL; and

(b) the Client has met all of its other obligations to MPL.

13.2 Receipt by MPL 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.

13.3 It is further agreed that:

(a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to MPL on request.

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for MPL and must pay to MPL the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.

(c) the production of these terms and conditions by MPL shall be sufficient evidence of MPL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with MPL to make further enquiries.

(d) the Client 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 Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for MPL and must pay or deliver the proceeds to MPL on demand.

(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MPL and must sell, dispose of or return the resulting product to MPL as it so directs.

(f) unless the Materials have become fixtures the Client irrevocably authorises MPL to enter any premises where MPL believes the Materials are kept and recover possession of the Materials.

(g) MPL may recover possession of any Materials in transit whether or not delivery has occurred.

(h) the Client 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 MPL.

- (i) MPL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

**14. Personal Property Securities Act 1999 (“PPSA”)**

- 14.1 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to MPL for Works – that have previously been supplied and that will be supplied in the future by MPL to the Client.
- 14.2 The Client 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 MPL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, MPL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of MPL; and
  - (d) immediately advise MPL 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.
- 14.3 MPL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by MPL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by MPL under clauses 14.1 to 14.5.

**15. Security and Charge**

- 15.1 In consideration of MPL agreeing to supply the Works, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies MPL from and against all MPL’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MPL’s rights under this clause.
- 15.3 The Client irrevocably appoints MPL and each director of MPL as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client’s behalf.

**16. Defects, Returns and Warranties**

- 16.1 The Client shall inspect the Materials on delivery and shall within two (2) days of delivery (time being of the essence) notify MPL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford MPL an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which MPL has agreed in writing that the Client is entitled to reject, MPL’s liability is limited to either (at MPL’s discretion) replacing the Materials or repairing the Materials.
- 16.2 Notwithstanding the provisions of clause 16.1, in the event where the Client fails to comply with the right to MPL to have first refusal to inspect any alleged claim and engages another third party to rectify, this will void any warranty previously offered.
- 16.3 Materials will not be accepted for return other than in accordance with 16.1 above.
- 16.4 Subject to the conditions of warranty set out in clause 16.5 MPL warrants that if any defect in any workmanship of MPL becomes apparent and is reported to MPL within twelve (12) months of the date of delivery (time being of the essence) then MPL will either (at MPL’s sole discretion) replace or remedy the workmanship.
- 16.5 The conditions applicable to the warranty given by clause 16.4 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 Client to properly maintain any Materials; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines set out in the Client’s Responsibility Sheet provided by MPL; 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 MPL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MPL’s consent.
  - (c) in respect of all claims MPL shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client’s claim.
- 16.6 For Materials not manufactured by MPL or materials supplied by the client, the warranty shall be the current warranty provided by the manufacturer of the Materials. MPL 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.

**17. Consumer Guarantees Act 1993**

- 17.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by MPL to the Client.

**18. Intellectual Property**

- 18.1 Where MPL has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in MPL, and shall only be used by the Client at MPL's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of MPL.
- 18.2 The Client warrants that all designs, specifications or instructions given to MPL will not cause MPL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MPL against any action taken by a third party against MPL in respect of any such infringement.
- 18.3 The Client agrees that MPL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which MPL has created for the Client.

**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 MPL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes MPL any money the Client shall indemnify MPL from and against all costs and disbursements incurred by MPL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MPL's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies MPL may have under this contract, if a Client has made payment to MPL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MPL under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 19.4 Without prejudice to MPL's other remedies at law MPL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MPL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MPL becomes overdue, or in MPL's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by MPL;
  - (c) the Client becomes insolvent or bankrupt, 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**20. Cancellation**

- 20.1 Without prejudice to any other remedies MPL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MPL may suspend or terminate the supply of Works to the Client. MPL will not be liable to the Client for any loss or damage the Client suffers because MPL has exercised its rights under this clause.
- 20.2 MPL may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice MPL shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to MPL for Works already performed. MPL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by MPL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**21. Dispute Resolution**

- 21.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

**22. Construction Contracts Act 2002**

- 22.1 The Client hereby expressly acknowledges that:
- (a) MPL 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 Client, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to MPL by a particular date; and
    - (iv) MPL has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if MPL 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 Client or by any person claiming through the Client; 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 MPL exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to MPL under the Contractual Remedies Act 1979; or

**Moods Plumbing Limited – Terms & Conditions of Trade**

(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of MPL suspending work under this provision.

**23. Privacy Act 1993**

- 23.1 The Client authorises MPL or MPL’s agent to:
  - (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client’s creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by MPL from the Client directly or obtained by MPL 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 Client.
- 23.2 Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Client shall have the right to request MPL for a copy of the information about the Client retained by MPL and the right to request MPL to correct any incorrect information about the Client held by MPL.

**24. General**

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party’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.
- 24.2 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 Christchurch Courts of New Zealand.
- 24.3 MPL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MPL of these terms and conditions (alternatively MPL’s liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 24.4 MPL may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client’s consent.
- 24.5 The Client cannot licence or assign without the written approval of MPL.
- 24.6 MPL may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of MPL’s sub-contractors without the authority of MPL.
- 24.7 The Client agrees that MPL may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for MPL to provide Works to the Client.
- 24.8 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.
- 24.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

I certify that the above information is true and correct. I have read and understand the TERMS AND CONDITIONS OF TRADE of Moods Plumbing Limited and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client. I shall be personally liable for the performance of the Client’s obligations under this contract.***

SIGNED (CLIENT):		SIGNED (WITNESS TO CLIENT’S SIGNATURE):	
_____		_____	
Name: _____	Name: _____	Date: _____	
Position: _____	Address: _____		
ID: _____	Date of Birth: _____	_____	Postcode: _____
(Driver’s Licence, Passport, etc.)			

SIGNED (MPL): \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

This is a **Terms and Condition of Trade** under the Construction Contracts Act 2002. Please read clause 22.