

Terms of Trade: Grouse Plumbing Ltd



1. DEFINITIONS

In these terms of trade:

“**Account**” means the Customer’s account with the Vendor.

“**Grouse Plumbing**” means Joshua Van Den Dop trading as Grouse Plumbing and its employees and authorised subcontractors.

“**Customer**” means the person or entity accepting these terms and conditions and their employees and authorised sub-contractors.

“**Product**” means goods supplied by Grouse Plumbing to the Customer at any time.

“**Guarantor**” means any party guaranteeing and indemnifying the performance of the Customer’s Account with Grouse Plumbing.

“**Goods**” means the goods or products supplied by Grouse Plumbing to the Customer pursuant to these terms and conditions.

“**Order**” or “**Orders**” means the order or orders of the Customer to Grouse Plumbing requesting it to supply Goods and Services.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Prices**” means the prices for the supply of the Goods or Services or both.

“**Services**” means the services supplied by Grouse Plumbing to the Customer pursuant to these terms and conditions.

“**CCA**” means the Construction Contracts Act 2002 and revisions.

2. ORDERS AND QUOTATIONS

Order forms

2.1 Orders will be on such forms as Grouse Plumbing specifies from time to time.

Quotations

2.2 Where a quotation is given by Grouse Plumbing for the supply of Goods and Services it is valid for 30 days from the date of issue.

Cancellation of Orders

2.3 Any Order accepted by Grouse Plumbing cannot be subsequently cancelled by the Customer without Grouse Plumbing's written consent and payment of any costs and expenses that Grouse Plumbing may have incurred or be liable for as a result of the cancellation.

Contracting out

2.4 By accepting these terms, the Purchaser:

(a) represents that it acquires the Goods and Services for business purposes so that the Consumer Guarantees Act 1993 ("CGA") does not apply to them and their sale is not a consumer sale; and

(b) agrees with Grouse Plumbing that ss 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 ("FTA") do not apply to Grouse Plumbing or to any of its directors, employees or contractors in respect of any contract on these terms and conditions; and

(c) it is fair and reasonable for Grouse Plumbing to contract out of the **CGA and FTA**.

Hidden problems

2.5 In providing the Goods and Services, if Grouse Plumbing encounters unforeseen or hidden problems or unsuitable conditions (including but not limited to those underground, in wall or roof spaces and relating to flooring or worn, damaged or corroded fittings), Grouse Plumbing will contact the Customer immediately and provide it with an estimate of further costs to provide the Goods and Services as an adjustment to the Price. The Customer then has the option of accepting the adjusted Price or terminating the contract and paying Grouse Plumbing all costs incurred to the date of termination.

Other

2.6 Grouse Plumbing as registered and licensed plumbers and gasfitters will only undertake work that is in accordance with ASNZ Standards.

3. ACCEPTANCE

3.1 When the Customer makes an Order, the Customer accepts these terms and conditions of trade to the exclusion of the Customer's terms and conditions and any prior communication and discussions whether oral or written so that the contract between Grouse Plumbing and the Customer is only on the basis of these terms and conditions.

4. PRICES

Order Price

4.1 All Orders will be charged at Prices prevailing at the date of the contract.

Price Increases

4.2 Grouse Plumbing may increase those prices by any increase in prices charged to it by its suppliers or by any reasonable cost of supply between the date of the contract and the date of delivery or performance of the Goods and Services.

5. DELIVERY OF THE GOODS AND SERVICES

5.1 If the Order specifies the date and place for delivery and performance of the Goods and Services then those details apply but if no details are specified then delivery and performance will take place at the physical address of the Customer notified to Grouse Plumbing.

6. CONSENTS, ACCESS, STORAGE, AND RISK

Consents

6.1 The Customer is solely responsible for obtaining any necessary permits and ensuring compliance with all legislation, regulations, by-laws or rules in connection with the installation operation and provision of the Goods and Services.

Access and Storage

6.2 The Customer agrees to provide GrousePlumbing free of charge with:

(a) all necessary facilities for the delivery of the Goods and Services, including power, lighting, unloading, hoisting and lifting facilities, labour, site preparation and compliant employee amenities; and

(b) safe storage facilities are provided for protection against theft and damage of the Goods or any equipment or other items belonging to Grouse Plumbing.

6.3 The Customer is solely responsible for arranging and providing convenient access for the Goods and provision of Services to the proposed place of installation including stairs, lift or crane access as the case may require, failing which Grouse Plumbing may a further charge to the Customer to cover the additional reasonable costs incurred from such failure.

Failure to accept delivery

6.4 If the Customer cannot take delivery of the Goods or Services then the Customer is responsible for all additional charges caused by that failure.

Site co-ordination

6.5 Where installation or supply of the Goods or Services must be co-ordinated with other trades the Customer must provide Grouse Plumbing with a schedule detailing all relevant information relating to installation or supply with sufficient time allowed for Grouse Plumbing to meet delivery or supply dates.

Delivery date extension

6.6 The delivery or supply period will be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond Grouse Plumbing's control.

Customer Supplied Goods

6.7 If the Customer is to supply materials then those materials must meet the relevant ASNZ Standard. If Grouse Plumbing are not satisfied that the goods meet the ASNZ Standard then the materials will not be used. Grouse Plumbing will not be liable for any costs arising from the decision not to use the materials the Customer supplied. The Customer will be liable to pay for Grouse Plumbing time, materials and equipment costs that arise from the failure of the Customer to satisfy Grouse Plumbing that the goods they have supplied meet ASNZ Standard.

6.8 If the Customer is to supply materials then those materials must be on site prior to Grouse Plumbing attending to carry out the work. Specification sheets alone will not suffice. Grouse Plumbing will not be liable for any costs arising from delays due to Customer supplied materials not being available when Grouse Plumbing attends the site. The Customer will be liable to pay for Grouse Plumbing time, materials and equipment costs that arise from the failure of the Customer to have materials on site prior to Grouse Plumbing attending to carry out the work.

Risk

6.9 From the time of dispatch to the Customer by Grouse Plumbing, risk in all Goods supplied pass to the Customer and any loss, damage or deterioration to the Goods is the responsibility

of the Customer. The Customer is liable to pay for the Goods notwithstanding any loss, damage or deterioration to them.

6.10 In providing the Goods and Services Grouse Plumbing may be required to join into pre existing plumbing and gas installations that are to some extent to be retained. Grouse Plumbing will not be liable for any defects in the retained pre existing plumbing and gas installations.

6.11 If the Customer elects not to undertake some aspects of work recommended by Grouse Plumbing intended to protect the plumbing or gas installation from potential risk (such as, but not limited to, the risk of over-pressure), then Grouse Plumbing will not be liable in any regard should the potential risk eventuate.

7. HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

7.1 Grouse Plumbing is responsible for the actions of its employees pursuant to s 15 of the Health and Safety in Employment Act 1992 ("HSEA").

7.2 The Customer is responsible for compliance with the HSEA in respect of the Customer's site and shall advise Grouse Plumbing prior to commencement of any work of any hazards on the Customer's site and indemnify Grouse Plumbing against any breach by the Customer of the HSEA in respect of the site.

8. TIME OF PERFORMANCE

8.1 Time is not of the essence of the delivery of Goods or the provision of Services. Any failure to meet any indicated delivery date is not the breach of a material term of this contract.

8.2 Grouse Plumbing is not responsible for any delay in the delivery of Goods or the provision of Services. Delivery of Goods by Grouse Plumbing to a carrier is deemed to be delivery to the Customer.

9. TERMS OF PAYMENT

Generally

9.1 Unless otherwise specified, payment for all Goods and Services must be made no later than:

- (a) on completion of supply for domestic Customers;
- (b) the 7th day following supply for non-account commercial Customers;
- (c) the 20th day of the month following the date of invoice for account commercial Customers.

Progress payments

9.2 Progress payments claimed under the Construction Contracts Act 2002 must be made no later than 20 days after a payment claim is served on the Customer.

Deposit

9.3 Grouse Plumbing may require payment of a deposit by the Customer prior to its processing of any Order.

Overdue accounts

9.4 Grouse Plumbing may charge interest on all overdue amounts at 2.5% per annum over the best overdraft rate available to Grouse Plumbing on a daily basis from the due date to date of actual payment.

9.5 All costs of or incurred by Grouse Plumbing as a result of a default by the Customer including but not limited to administration charges, debt collection costs and legal costs as between solicitor and client are payable by the Customer.

Acceleration of payment

9.6 If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, Grouse Plumbing may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders will immediately become due.

10. CONSTRUCTION CONTRACTS ACT 2002

10.1 All Orders that are construction contracts under s 5 of the Construction Contracts Act 2002 ("CCA") are subject to the CCA and the Customer agrees that Grouse Plumbing has all the rights of a party to a construction contract under the CCA and any revision of the CCA.

11. WARRANTIES

Manufacturer's warranties

11.1 The Goods are purchased by Grouse Plumbing from distributors and/ or manufacturers and are subject to manufacturer's warranties and limitations of liability. The Customer agrees that its rights and remedies in respect of those Goods are only as contained in those manufacturer's warranties which Grouse Plumbing is able to assign to the Customer. Any performance of manufactured standard data given by Grouse Plumbing is based on information supplied by the distributors or OEM of the Goods. Grouse Plumbing does not

independently warrant to the Customer that the data is correct unless Grouse Plumbing has specifically done so in writing and then subject to recognised tolerances and variances based on inputs, loads, installation and usage requirements.

11.2 Subject to clause 11.1, if the warranty is not available to Grouse Plumbing, Grouse Plumbing gives to the Customer the following express conditions and warranties otherwise implied under the Sale of Goods Act 1908:

(a) Grouse Plumbing has the right to sell the Goods, free from any charge or encumbrance in favour of any third party;

(b) Where there is a contract for the sale of the Goods by description there is an implied condition that the Goods correspond with the description; and if the sale is by sample, as well as by description, the bulk of the Goods will correspond with the sample of the Goods and with their description;

(c) Where the Customer has expressly made known to Grouse Plumbing the particular purpose for which the Goods are required, so as to show that the Customer relies on Grouse Plumbing's skill or judgment, and the Goods are of a description which it is in the course of Grouse Plumbing's business to supply, the Goods are reasonably fit for such purpose; and

(d) Where the Goods are bought by description from Grouse Plumbing as a dealer in goods of that description the Goods are of merchantable quality except that where the Customer has examined the Goods upon delivery there is no warranty as regards defects which such examination ought to have revealed.

11.3 In respect of the Services Grouse Plumbing warrants that they will be performed to a standard of reasonable skill and care and in respect of both the Goods and Services to the extent that the Master Plumber's guarantee gives the Customer greater rights that guarantee will also apply to the Goods and Services.

11.4 The warranties given in clause 11.2(b), (c) and (d) are valid for the following periods (whichever occurs first):

(a) 12 months from the date of installation of the Goods or the performance of the Services by the Purchaser.

11.5 The warranties given by manufacturers which referred to in in clause 11.1 and by Grouse Plumbing in clause 11.3, at Grouse Plumbing's option in either case, may be satisfied by Grouse Plumbing either replacing the defective Goods or re-performing the Services at no cost to the Customer or by refunding the Price paid to the Customer.

11.6 Grouse Plumbing gives to the Purchaser no other warranties whether express or implied by law (including the Sale of Goods Act 1908) and makes no other representations (whether for the purposes of the Fair Trading Act 1986 or any other legislation).

11.7 Grouse Plumbing will accept no liability for any damages or losses (including loss of profits) arising as a consequence of any act, default or negligence on the part of Grouse Plumbing or of an employee, agent or contractor of Grouse Plumbing.

11.8 Notwithstanding anything in clauses 11.2 and 11.3, insofar as Grouse Plumbing may be liable for any loss, damage or injury arising directly or indirectly from any defect in the Goods or Services, the total liability of Grouse Plumbing, whether in tort, contract or under any other legal rule or principle, is limited in its aggregate to the lesser of \$500 or the cost of replacing the Goods or re-performing the Services to the required standard.

11.9 Under no circumstances whatsoever is Grouse Plumbing liable to the Customer for direct or indirect, special, incidental or consequential damages or loss including but not limited to damage or loss resulting from inability to use the Goods or from defective Services, loss of anticipated profits, loss by reason of plant shut down, non-operation or increased expense of operation, service interruption, loss of production, cost of purchased or replacement power, claims of customers, cost of money, loss of capital or revenue, or for any other damages or loss, or consequential damages, whether similar or dissimilar or of any nature arising from any cause whatsoever, whether based in contract, tort (including negligence), strict liability or any other theory of law and whether or not Grouse Plumbing has been given notice of the possibility of any such damages or losses occurring.

11.10 Disputes – No claim relating to Service and products will be considered by Grouse Plumbing unless made by the Customer within fourteen (14) days of supply or installation.

Consumer Guarantees Act 1993

11.11 Where the Consumer Guarantees Act 1993 (CGA) applies in spite of clause 2.4, the Customer has all the rights and remedies provided under the CGA.

12. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

12.1 Grouse Plumbing and the Customer acknowledge that these terms constitute a security agreement as defined by the Personal Property Securities Act 1999 (“PPSA”). For the purposes of the PPSA, in this clause the term “Collateral” includes the Goods and their proceeds including insurance payments. The Customer agrees to give Grouse Plumbing a security interest in all of the Customer’s present and after-acquired property that Grouse Plumbing has supplied as the Goods as the Collateral and agrees not to allow any person to file a finance statement over any of the Goods secured by this security agreement without the prior written consent of Grouse Plumbing .

12.2 Upon signing these terms the Customer acknowledges that:

(a) these terms are a security agreement for the purposes of s 36 of the PPSA, and

(b) a security interest is taken in all Goods previously supplied to the Customer and all Goods that will be supplied in the future by Grouse Plumbing to the Customer during the continuance of the party’s relationships.

12.3 The Customer undertakes to:

(a) Sign any further documents and/or provide any further information which Grouse Plumbing may reasonably require to register financing statements or financing change statements on the Personal Properties Securities Register,

(b) Give Grouse Plumbing not less than 14 days prior written notice of any proposed change to the Customer’s name and will use its best endeavours to ensure that a financing change statement is registered disclosing its new name; and

(c) Immediately advise Grouse Plumbing of any material change in its business practices of selling the Goods that would result in a change of the nature of proceeds derived from such sales.

(d) The Customer waives the rights listed in section 107(2) of PPSA, its right to receive the notice referred to in section 114(1)(a) of the PPSA, its right to reinstate under sections 133 and 134 and its right to receive verification statements under section 148 of the PPSA. The Purchaser agrees that Grouse Plumbing may exercise the rights in sections 108, 109, 111(1) and 120(1) of the PPSA whether or not Grouse Plumbing has priority over all other secured parties, and that Grouse Plumbing may charge for complying with a demand under s 162 of the PPSA. The Customer will inform any trustee in bankruptcy or liquidator of the Customer or any receiver of the Customer's business or assets of the rights of Grouse Plumbing and title to the proceeds of sale.

12.5 The security agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by Grouse Plumbing. The security interest granted in the Collateral has the same priority in relation to any Goods supplied to the Customer by Grouse Plumbing at any time.

13. ADDITIONAL SECURITY

Bonds and guarantees

13.1 Before Grouse Plumbing accepts an order from the Customer, Grouse Plumbing may require the Customer to pay a deposit, make progress payments or at the Customers' expense provide a bond or guarantee on such terms as Grouse Plumbing may reasonably require in order to secure payment of the Price. If it at any time considers that the payment of the Price is at risk Grouse Plumbing may require those securities to be put in place as a condition to any further supply of the Goods and Services whether or not in respect of an existing contract.

Right to mortgage and caveat

13.2 It is agreed by the Customer (and any guarantor) that Grouse Plumbing (at the Customer's expense) has the right to complete and register a mortgage over any property owned by the Customer (and any guarantor) to secure payment of the Price. Grouse Plumbing also has the right to register a caveat on that property for those purposes and Customer (and any guarantor) irrevocably appoint Grouse Plumbing as their attorney for those purposes. To this end, the Customer (and any guarantor) agrees to make payment of all costs incurred by Grouse Plumbing (including legal costs on a solicitor and own client basis) in completing and registering a mortgage over any property owned by the Customer (and any guarantor) within seven (7) days of receiving any Grouse Plumbing invoice or demand requesting payment of those costs.

Certificates

13.3 It is agreed by the Customer that if the Customer fails to pay any account Grouse Plumbing may withhold the release of any producer statement or other certification or

documentation relating to the work performed until such time as the account and any associated costs are paid in full.

14. EVENTS OF DEFAULT

14.1 The Price is immediately due to Grouse Plumbing (which also has the option to suspend delivery or performance of the Goods and Services or to terminate any contact on these terms and conditions) if:

- (a) a receiver is appointed over any of the assets or undertaking of the Customer;
- (b) an application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;
- (c) the Customer goes into voluntary liquidation or amalgamates with another company;
- (d) the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition with its creditors; or
- (e) the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993 or commits any act of bankruptcy.

15. GENERAL

15.1 The Customer authorises Grouse Plumbing to collect and use information from you and third parties relating to the performance and enforcement by Grouse Plumbing of any contract with the Customer, subject to compliance with the Privacy Act 1993 in the case of personal information.

15.2 All Quotations, Orders and Prices are plus GST.

15.3 Grouse Plumbing is not responsible for any failure to perform its obligations, if it is prevented or delayed in performing those obligations by an event of force majeure.

16. ADDITIONAL ELEMENTS OF OUR TERMS OF TRADES

16.1 Invoices sent to you are payment claims under the Construction Contracts Act 2002 (& amendments).

16.2 We will determine site staffing levels considering the job and our Health & Safety policy.

16.3 Chargeable time includes travel to site and time collecting materials

16.4 Goods remain the property of Grouse Plumbing until accounts are paid in full.

16.5 No Receipts are issued.

16.6 Our bank account details are on your invoice.