

MANDER PLUMBING LTD TERMS AND CONDITIONS OF TRADE
(updated April 2016)

1 Acceptance

- 1.1 These terms constitute the terms and conditions between us, the supplier of goods and services, and you, the client, and apply to all goods and services provided by us to you from time to time (unless otherwise agreed in writing). Engaging us to carry out Work or acceptance of a Quote from us is acceptance by you of these terms.

2 Price

- 2.1 Where a Quote has been given, that Quote remains valid for 20 Working Days. We may withdraw that Quote at any time before acceptance by you in writing on the form provided.
- 2.2 A Quote is based on costs applying at the date of the Quote. Without limiting clause 9, any changes in cost arising from sources beyond our control (eg, changes in prices charged by suppliers or subcontractors to us, or in government charges) is to your account.
- 2.3 The following rates apply where Work is charged on the basis of time and materials (charge-up basis), and for the purpose of calculating any variation to quoted work under clause 9:

Labour *Minimum charge Plumbing \$110.00 (plus GST) covers the first hour chargeable to the job.*
Minimum charge Gas \$120.00 (plus GST) covers the first hour chargeable to the job.
Normal hourly rate \$82.00 (plus GST) per hour.
After hours charges will apply please ask.

Materials *Plumbing World listed price*

Vehicle charges *On the basis of time distance travelled and parking costs.*

We service WELLINGTON CENTRAL & the suburbs of PORIRUA, TAWA, JOHNSONVILLE, KHANDALLAH, WADESTOWN, MIRIMAR, ISLAND BAY, LOWER HUTT, PETONE, SEAVIEW.

Note: Calls outside the above areas incur higher travel charges.

3 Our responsibilities

- 3.1 We will carry out the Work with reasonable skill and care, in accordance with the plans and specifications (if any), the Building Act 2004, the Building Code and any building consents issued in respect of the Work.
- 3.2 We will remedy any defect in the Work which you notify to us in writing within 12 months of completion of the Work (if section 362Q of the Building Act 2004 applies to the contract) or within 90 days of completion of the Work otherwise. Your notice must be sufficiently detailed to clearly identify what Work is claimed defective. We are not liable for any defect within reasonable tolerances, failure to achieve standards of finish or detail beyond what is required by the contract (subject to consents and Variations) and for any defect caused by or arising out of the actions of any person outside our control, for any faults in the performance or durability of materials supplied by you, fair wear and tear, or failure to maintain the Work.
- 3.3 We shall have a reasonable opportunity to rectify any defects identified and you may not engage anyone else to rectify the defects until a reasonable time has elapsed and you have given us at least 20 Working Days' notice of your intention to engage someone else. If you engage someone else to rectify the defects when you are not entitled to do so, then without prejudice to our other rights and remedies, to the maximum extent permitted by law, we will be immediately discharged from any further obligation or liability in respect to the Work.
- 3.4 These terms do not limit the implied warranties in s362I to s362K of the Building Act 2004.

4 Time to completion

- 4.1 Subject to receiving sufficient access as set out below, we will commence the Work on the Start Date, and complete the Work by the Completion Date, in each case subject to any extensions of time to which it is entitled under 4.2 and 4.3. If it is necessary to work outside ordinary working hours to meet your completion target or due to any other circumstances outside our control, you will be liable to any extra cost incurred.
- 4.2 We shall not be liable for any delay in carrying out the Work due directly or indirectly to circumstances reasonably outside our control, including disputes with subcontractors, bad weather, force

majeure, accidents, fire, shortage of labour and/or materials, labour disputes, variations, failure of suppliers to deliver, or acts of any government, territorial authority or similar body.

- 4.3 If an extension of time is required to the Completion Date due to any of the above reasons above or any other reason beyond our reasonable control, we shall provide written notice to you of any such extension reasonably promptly after the delay becomes apparent, together with details of the new Completion Date.

5 Installation

- 5.1 You shall give us access to the Site and provide proper facilities for carrying out the work, including use of any existing goods or passenger lifts, cranes, hoists and builder's scaffolding. Unless specified otherwise, the Work shall not include any structural or other alteration to any part of a building. Access and facilities shall be provided within a reasonable time after acceptance of the Quote or at a date notified by you and agreed by us in writing.
- 5.2 You are responsible for ensuring that there is sufficient title or other legal entitlement to the Site to allow the Work to be carried out, and for surveying the Site and advising us of boundaries and the specific location of underground utilities.
- 5.3 You shall advise us of any particular hazards relating to the Site, and take all practicable steps to ensure your own safety throughout the Work and cooperate fully in implementing our health and safety and environmental policies and procedures and obligations under the relevant health and safety legislation.
- 5.4 If any materials, plant, and equipment required for the Work expressed to be 'client supplied' or 'owner supplied', you are responsible for ensuring that such materials comply with the Building Code and are fit for purpose, and all plant and equipment complies with all health and safety legislation, codes and requirements, and shall sign a declaration and indemnity in a form required by us to this effect. For the avoidance of doubt, any owner-supplied materials which are faulty are not a defect in the Work under 3.2.

6 Consents

- 6.1 You are responsible for obtaining all necessary consents for the Work (including Variations) and for obtaining a code compliance certificate (if required) on completion. We may require that you provide a copy of all necessary consents before commencing the Work or any Variation. Where consent is required and you have failed to obtain it, we may lodge an application for the consent as your agent and at your expense.

7 Plans and specifications

- 7.1 We are entitled to rely on the accuracy of and shall not be obliged to check any plans, specifications or other information supplied by you.

8 Payment

- 8.1 We will issue regular progress payment invoices. Invoices are payable in full 20 Working Days from the date of issue. Any payment schedule under the CCA must be provided within 10 Working Days from the date of any payment claim provided by us.
- 8.2 If a Quote provides for invoices to be submitted on certain milestones, and the Work is delayed or suspended for any reason outside our control, we may issue an invoice at the time a relevant milestone would otherwise have been achieved.
- 8.3 Any amount which is not paid when due may incur interest at 2% per month. We also reserve other rights and remedies, including the right to claim the costs of recovering any debt.
- 8.4 Any deposit paid shall be held by us and applied against the final invoice. If the final invoice is less than the deposit, we will refund the balance to you on issuing the final invoice. If the Quote provides for a deposit, and the deposit is not paid in full 7 days before the Work is due to start, we may (at our option, without further notice) suspend and/or cancel the contract for the Work, without prejudice to any other rights and remedies.

9 Variations

- 9.1 You may request variations to the Work, but may not (unless otherwise agreed in writing) request a Variation omitting or reducing the Work to be performed. With the exception of the Variations set out in 9.2, all requested Variations must be in writing and contain:

- (a) A description of the work required under the Variation;
- (b) Any required amendments to issued consents or any additional consents that will be required;
- (c) Any agreed adjustment to the Contract Price and/or the Completion Date for the Work.

9.2 We are entitled to claim a Variation for:

- (a) any emergency works required for health and safety or environmental reasons;
- (b) additional work and/or changes to the Work caused by any consent requirements;
- (c) unforeseen physical conditions, substitutions of any materials, wages and price changes; or
- (d) any increase in costs arising from a failure or delay on your part in complying with these terms.

No allowances have been made in the Contract Price for the handling of hazardous substances (including asbestos), and we are also entitled to claim a Variation for any such costs.

9.3 All Variations claimed under 9.2 shall be calculated at the rates set out in 2.3.

10 Subcontractors: We may sublet the whole or any portion of the Work, and will be responsible for the work of our subcontractors.

11 Liability

11.1 If we breach our obligations to you, we will be liable for reasonable foreseeable costs or losses caused directly by the breach. We will not be liable for any indirect, consequential or special loss, or any loss of profit, however arising, whether in contract, tort or otherwise.

11.2 To the maximum extent permitted by law, our maximum aggregate liability, whether in contract, tort or otherwise, in relation to any costs or losses shall be five times the price paid by you for the Work, or \$250,000, whichever is the lesser. If either party is liable to the other (whether in contract, tort or otherwise), and the other party or a third party has contributed to the loss or damage, the liable party will only be liable to the extent of its proportional contribution

11.3 Without limiting any defences either party has under the Limitation Act 2010 or the Building Act 2004, neither you or us will be liable for any matter arising from this contract or the Work unless a claim is formally made on a party within 6 years from completion of the Work.

12 Insurance

12.1 All goods and materials are at your risk while on the Site or under your control. You are responsible for insuring the Work (and we may require that proof of such insurance is provided).

12.2 We hold public liability insurance up to \$2,000,000 against liability for loss or damage to any property, or injury or death or illness which arises from carrying out the Work. We hold professional indemnity insurance up to \$ 250,000, and will use reasonable endeavours to maintain a similar policy for 6 years from completion of the Work.

13 Our property on Site

13.1 You acknowledges that:

- (a) the legal, equitable and beneficial ownership and title to any plant, equipment or materials brought by us onto the Site onto any site or premises owned or controlled by you remains vested in us at all times;
- (b) title in all materials supplied as part of the Work remains vested in us until all amounts owing to us have been paid in full.

13.2 For the purposes of the Personal Property Securities Act 1999 (PPSA), you agree a security interest is granted in the property described in 13.1 (and all proceeds of that property). We may apply all payments in such manner as is desirable to preserve any purchase money security interest in that property. Nothing in section 116, 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies to the security interest, and you waive the right to receive a verification statement in respect of any security interest.

14 Signage

14.1 You agree that we have the right to erect signage on the Site advertising ourselves during the period of the Work.

15 Suspension and termination

15.1 Without prejudice to any of our other rights or remedies, we may suspend the Work by notice if you default in any of your obligations

under these terms, including failing or refusing to pay any invoiced amount in full by its due date.

15.2 We may terminate our obligations under these terms if at any time you are bankrupt, have a liquidator, receiver or statutory manager appointed, or default in your obligations and do not remedy that default within 5 Working Days of receiving a notice requiring remedy.

16 Business Transactions

16.1 If the Work is to be carried out for the purposes of a business, then to the maximum extent permitted by the law, all guarantees, warranties, rights, or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other guarantees, warranties, or provisions otherwise implied by statute or rule of law are expressly excluded.

17 Privacy Act

17.1 You authorise us to use information collected from you and to collect information from third parties for purposes relating to performance under this Contract.

18 Notices

18.1 All notices are to be in writing and hand delivered or sent by post or email to the addresses set out in the Quote. Our address for service and postal address is the physical address set out in the Quote.

18.2 A notice is deemed to be received:

- (a) if personally delivered, when delivered; or
- (b) if posted, 5 Working Days after posting; or
- (c) if sent by email, when the email leaves the sender's communications system, provided that the sender does not receive any error message relating to the sending of the email; or receives confirmation that the email was delivered (which may include an automated delivery receipt from the recipient's communications system).

18.3 Despite 18.2, any notice received after 5pm, or received on a day that is not a Working Day, is deemed not to have been received until 9am on the next Working Day.

19 Dispute Resolution

19.1 If there is any dispute relating to these terms or the Work, the party raising the dispute must give the other party written notice specifying particulars of the dispute. If negotiations between the parties do not resolve the dispute, either party shall refer a dispute to adjudication under the CCA or refer the matter to the Master Plumbers Association for settlement through the Association's Disputes Procedure. If the dispute is referred to adjudication, for the purposes of s33 (1) (c) of the CCA, the nominating body shall be the Master Plumbers Association.

20 Definitions

In these terms:

CCA means the Construction Contracts Act 2002.

Completion Date means the expected date on which we reasonably believe the Work will be completed, subject to extensions of time, as stated in the Quote.

Contract Price means the price for the Work calculated in accordance with the Quote and subject to any adjustments under these terms.

Including does not imply limitation.

Master Plumbers Association means Master Plumbers, Gasfitters & Drainlayers NZ Incorporated.

Quote means the letter provided by us to you describing the scope of the Work.

Site means the site address at which the Work is to be carried out, as stated in the Quote.

Start Date means the expected start date at which we reasonably believes the Work will commence, as stated in the Quote.

Variation means a variation to the Works under section 9.

We means Mander Plumbing Limited (including where we are trading as Mander Projects).

Work means the work stated in the Quote (subject to Variations).

Working Day has the meaning given in the CCA.

You means the person(s) stated as the Client(s) in the Quote.