

TERMS AND CONDITIONS OF TRADE

In these terms and conditions:

‘CPG’ means Collins Plumbing & Gas Limited and (if applicable) its related companies, successors, assigns and authorised agents;

‘Customer’ means the person, company or entity purchasing goods and/or services from CPG;

‘invoice’ includes any written quotation and other contractual document issued by CPG;

‘goods’ means all goods sold or to be sold by CPG to the Customer; and

‘services’ means all services provided by CPG to the Customer.

TERMS AND CONDITIONS PARAMOUNT

Except as expressly agreed in writing these terms and conditions shall apply to and govern all contracts and other dealings between CPG and the Customer notwithstanding any statement to the contrary in any order or other document of the Customer.

ACCEPTANCE

Any instructions received and accepted by CPG from a Customer for the supply of goods and/or services shall constitute a binding contract and acceptance on these terms and conditions.

ORDERS

Notwithstanding any credit arrangement, CPG reserves the right to accept or decline any Customer order.

Where goods are sold by description or by reference to a sample, CPG will use its best endeavours to supply goods complying with such description or sample, but CPG shall not be liable for any variation in the goods.

The quantity, quality and description of, and any specification for, goods shall be those set out in any CPG quotation or the Customer’s order as may be applicable provided that CPG may make changes to specifications which do not materially affect the quality or performance of goods.

Where there shall be a CPG quotation and a Customer order, the terms of CPG’s quotation shall govern.

DELIVERY

CPG will endeavour to deliver goods within any timeframes requested by the Customer, but delivery time shall not be of the essence and CPG shall not be liable for any loss to the Customer caused by any delay or non-delivery. CPG reserves the right to deliver goods by installments and failure by CPG to deliver any one or more installment shall not entitle the Customer to cancel the contract as a whole.

PRICE

The Customer shall pay the price stated on CPG’s invoice, save for errors, which CPG reserves the right to correct. All prices are quoted and shown net excluding GST, and do not include any other taxes or levies, delivery/freight charges, insurance charges or currency exchange fluctuations which, if applicable, will be extra charges payable by the Customer.

All published prices are indications only. In some cases estimates have been made and actual prices may vary. Prices are subject to alteration without prior notice and goods will be sold at the relevant prices at the time of delivery.

Services provided by CPG shall be charged on the basis of either fixed quotes or time charge at CPG’s rates from time-to-time. The Customer shall pay for all materials used and all other out-of-pocket expenses incurred by CPG in connection with the provision of services and travelling expenses where applicable.

If in CPG’s invoice there is reference to a deposit or any component of the purchase price for the goods or services being non-refundable, then the Customer shall not be entitled to a refund of any amount so paid in the event of cancellation or termination of contract for any reason whatsoever.

PAYMENT

All accounts are:

1. Cash on delivery of goods or completion of provision of services (COD); or
2. Credit approved accounts, if applicable (Credit Account); or
3. On terms as agreed in writing between CPG and the Customer.

Notwithstanding that the Customer may have a Credit Account or other agreed trading terms, CPG reserves the right to require COD or other payment terms in respect of any particular supply of goods or services.

In the case of Credit Accounts and other agreed trading terms, the Customer shall pay in full all accounts and amounts owed to CPG by the payment date(s) specified in CPG’s invoice(s). If no payment date is specified, then payment in full is due by the 20th day of the month following the month of CPG’s invoice. No credit shall be extended on overdue accounts.

Time for payment shall be of the essence. In the event that payment is not received by the due date default interest may be charged by CPG at a rate equivalent to 11 per cent per annum above the unsecured overdraft interest rate charged by CPG’s bank and calculated on a daily basis on all moneys outstanding for the period during which the payment has been overdue until all due moneys have been paid in full.

All payments shall be applied first in payment of default interest (if any).

Any discount offered by CPG is contingent upon receipt of all monies owed by the Customer on or before the payment due date(s). If the Customer fails to make full payment by the due date any discount will immediately be withdrawn and debited to the Customer’s account.

CPG may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer to CPG and CPG shall not be bound by any conditions or qualifications that the Customer may make in relation to any payment.

The Customer authorises CPG to obtain at any time from any person or entity any information that CPG may require for the purpose of assessing the Customer’s creditworthiness and the Customer irrevocably authorises and requests all such persons and entities to release to CPG any personal information held concerning the Customer. Where the Customer is a natural person then such authority is authority and consent for the purposes of the Privacy Act 1993. The Customer agrees that in the event of its default CPG may provide details of that default and personal information relating to the Customer to any credit agency so that such credit agency can maintain effective records.

DEFAULT

If the Customer fails to pay any amount owed to CPG by the due date, or fails to comply with any other obligation owed to CPG, then without prejudice to any of its other rights, remedies and powers CPG may (notwithstanding that CPG may have waived any previous default by the Customer):

1. Cancel any contract and/or suspend further deliveries of goods or provision of services to the Customer.
2. Enter the Customer’s premises or any other premises that the Customer is authorised to enter and retake possession of goods and sell them without being liable in any way to the Customer.
3. Appoint a receiver pursuant to the Receiverships Act 1993 in respect of the goods (including their proceeds) and any such receiver may take possession of the goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
4. Charge penalty interest as set out under “Payment” above.

CPG may at any time by notice in writing suspend or terminate the Customer’s Credit Account or any other agreed trading terms and require immediate payment by the Customer of all amounts owed to CPG and CPG shall be entitled to exercise the powers set out in the preceding paragraphs.

The Customer will upon demand pay to CPG all costs, charges and expenses (including, but not only, collection commissions and legal costs on a solicitor and own client basis) incurred by CPG in collecting or taking action to collect any amount owed by the Customer and in connection with the exercise, enforcement or preservation of any of CPG’s rights, powers or interests.

RETENTION OF TITLE

Notwithstanding delivery and the passing of risk in goods, or any other provision of these terms and conditions, all goods (including, where applicable, any resulting product into which the goods are incorporated, manufactured or commingled, whether or not the original identity of the goods is lost) shall remain and be the property of CPG as legal and equitable owner until CPG has received cleared payment in full of all moneys owed by the Customer to CPG.

Until CPG has received cleared full payment of all moneys owed by the Customer to CPG the Customer shall hold the goods on trust for CPG’s and shall store the goods in such a way that it is clear that they are the property of CPG. Unless CPG directs otherwise, the Customer may use or resell the goods by way of bona fide sale at market value in the ordinary course of its business.

Until such time as the property in goods passes to the Customer, provided the goods are still in existence and have not been resold, CPG shall be entitled at any time to require the Customer to return the goods to CPG and CPG and its agents may at any time without further notice enter the Customer’s premises or any other premises where the goods are stored and retake possession of the goods (if required, disconnecting the goods from any vessel, structure or equipment to which they may be attached or installed) or perfect CPG’s security interest in the goods. In so doing, CPG shall have no liability for any losses, costs or charges suffered or incurred by the Customer and the Customer indemnifies and keeps indemnified CPG against all liability CPG may have to any third party in so acting.

PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

The goods shall be the collateral as that term is defined in the PPSA. The Customer grants in favour of CPG a charge over all goods supplied by CPG where such goods have been delivered but the Customer has not paid

all moneys owed to CPG and over all the Customer’s present and after-acquired property supplied by CPG, and such charge shall be a “security interest” for the purposes of the PPSA and shall secure payment of all moneys owed by the Customer to CPG including interest and other amounts payable under these terms and conditions and the costs of registering such security interest.

Where a charge granted over any goods is a registrable security interest under the PPSA the following shall apply:

1. The Customer irrevocably appoints CPG as the Customer’s attorney to do anything required to register the security interest on the Personal Property Securities Register including the authority to make such inquiries and obtain such information from third parties as is necessary or desirable to register the security interest.
2. The Customer consents to the collection from any third party of any information necessary or desirable to register the security interest.
3. The Customer will provide such information and do such acts and execute such further documents as in the opinion of CPG may be necessary or desirable to enable CPG to register and perfect under the PPSA the security interest as a first priority interest or with such other priority as CPG may agree in writing.
4. The Customer shall not challenge in any way CPG’s right to register the security interest.
5. The Customer shall not seek to obtain or register a discharge of the security interest without the prior written consent of CPG.

The Customer agrees that sections 114(1)(a), 116, 117(1)(c), 119,120(2), 121, 125 to 127, 129 and 131 to 133 of the PPSA shall not apply to these terms and conditions or the security created hereunder.

The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.

The Customer shall not change its name, without first notifying CPG of its new name at least 7 days prior to the change taking effect. The Customer must not allow or permit the creation of a lien over any goods prior to payment in full to CPG of all moneys owed by the Customer to CPG. The Customer will upon demand pay all CPG’s expenses and legal costs (on a solicitor and own client basis) in connection with the registration of a financing statement or financing change statement relating to the security interest created by these terms and conditions or of obtaining an order under section 167 of the PPSA. If all moneys owed by the Customer have been paid to CPG in full, including all moneys payable under these terms and conditions, CPG shall at the request of the Customer and at the Customer’s cost, register a discharge of the security interest.

RETURNS

CPG will not accept goods for return unless agreed in writing. CPG will not accept return of indented goods ordered specifically for the Customer. In the event of CPG agreeing to accept returns, the following conditions shall apply:

1. All goods must be unopened in their original packaging and in the same condition as when they left CPG’s premises, including, but not limited to, the non-removal of tags.
2. All goods must be returned together with all original documentation within 5 days of CPG notifying the Customer of its willingness to accept goods for return.
3. All goods returned must be delivered pre-paid to CPG’s premises.

CPG reserves the right at its option to refuse the return of any goods, and to charge (in addition to any non-refundable deposit) a restocking fee of 20% of the GST-exclusive purchase price.

WARRANTIES/DEFECTS

It is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of goods for any particular purpose and no representation, warranty or undertaking in relation to the goods has been or is made or given by or on behalf of CPG in relation thereto. All claims for defective goods must be in writing and delivered to CPG together with the goods in question for inspection by a designated representative of CPG within 5 days of receipt of the goods. All claims must quote the relevant CPG invoice number. Any claims not made within 5 days of receipt will be deemed waived by the Customer.

CPG shall have no liability in respect of any defect arising from misuse, willful damage, negligence, failure to follow instructions, unauthorised alteration or modification, abnormal working conditions or fair wear and tear. CPG shall have sole right to decide whether goods are capable of repair and CPG’s liability (if any) in respect of goods shall be limited as follows:

1. Where goods are capable of repair, to the repair of the goods or the payment of the cost of having the goods repaired; or
2. Where goods are incapable of repair, to the replacement of the goods or supply of equivalent goods or the payment of the cost of replacing the goods or acquiring equivalent goods.

No guarantee or warranty is given, and no obligation incurred, by CPG in respect of goods or components not manufactured by CPG, in respect of which the Customer shall only be entitled to the benefit of any guarantee or warranty given to CPG by the manufacturer or supplier provided that CPG shall not be required to pay or incur any cost in relation thereto.

All services provided by CPG are provided in good faith on the basis of the information provided by the Customer. Where CPG is requested by the Customer to provide casual advice in conjunction with the sale of goods but not constituting the formal provision by CPG of services then CPG shall have no liability whatsoever in relation to any such advice given and the Customer shall rely solely on its own judgment in connection with all such matters. If the Customer alleges defects in CPG’s workmanship then the Customer shall forthwith after becoming aware of the same notify CPG in writing. Failure to do so notify CPG in writing shall constitute a waiver by the Customer of its rights against CPG in respect of any such alleged defect. CPG shall have no liability where any services performed or goods supplied have been re-installed, modified, not maintained or improperly maintained or improperly used. Any rectification work required to be carried out by CPG shall be carried out at a place and at a time stipulated by CPG and the Customer shall be responsible for delivering the goods or vessel, as the case may be, to that place by that time.

No guarantee, warranty, representation or statement shall be binding on CPG unless made in writing by a director or senior officer of CPG. Except as expressly set forth in these terms and conditions all warranties and conditions, whether implied by law or otherwise, are excluded and CPG shall have no liability whatsoever to the Customer. CPG shall not be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) even if such loss were reasonably foreseeable or CPG had been advised of the possibility of the Customer incurring the same.

If it shall be held that CPG has any liability to the Customer then, except as expressly set forth in these terms and conditions, the liability of CPG to the Customer shall not exceed the lesser of:

1. the value of the goods or services the subject of any claim; or
2. the contract price.

CPG shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, quotation, invoice, communication or other document or information issued by it.

Nothing in these terms and conditions shall affect the rights of the Customer under the Consumer Guarantees Act 1993, Fair Trading Act 1986 and other statutes that may imply warranties and conditions, provided that, if the Customer is, or holds itself out to be, acquiring the goods for the purposes of a business, then such statutes are excluded.

PRODUCT DISCLAIMER

CPG takes no responsibility for the warranty, repair, and replacement or any problem resulting where by a product, fixture, tap or fitting supplied by the client. Such product may be installed by CPG as per the manufacture instruction but any fault, malfunction or manufactures warranty issue is the sole responsibility of the Customer. Any labour and/or materials required in any rectification work will be charged to the Customer as an extra. Should the Customer wish to claim the costs, the Customer must first pay CPG’s invoice, following which the Customer can claim reimbursement from the importer, wholesaler or other third party as the case may be.

WAIVER

These terms and conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. CPG shall not be deemed to have waived any term or condition unless such waiver shall be in writing and signed by a director of CPG and any such waiver shall apply only to the particular transaction to which it refers.

SEVERABILITY

If any clause or provision of these terms and conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.

GOVERNING LAW

The contract shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.