
Kingfisher Plumbing Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “Kingfisher Plumbing” means Kingfisher Plumbing Ltd, its successors and assigns or any person acting on behalf of and with the authority of Kingfisher Plumbing Ltd.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting Kingfisher Plumbing 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 Kingfisher Plumbing 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 Kingfisher Plumbing 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 Kingfisher Plumbing.
- 2.3 Any advice, recommendation, information, assistance or service provided by Kingfisher Plumbing in relation to Materials or Works supplied is given in good faith, is based on Kingfisher Plumbing’s own knowledge and experience and shall be accepted without liability on the part of Kingfisher Plumbing and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
- 2.4 in the event that the Client requests Kingfisher Plumbing to make an emergency after hours Call-Out to carry out Works for critical equipment then Kingfisher Plumbing reserves the right to charge a minimum Call-Out fee of an additional two (2) hours labour cost, a per kilometre travelled rate plus any Materials used to undertake the Works, unless otherwise agreed between Kingfisher Plumbing and the Client.
- 2.5 If Kingfisher Plumbing 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.
- 2.6 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, Kingfisher Plumbing reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2 In all such cases Kingfisher Plumbing 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 Kingfisher Plumbing and the Client agree to such changes.
- 2.7 Where the Client is a tenant (and therefore not the owner of the land and premises where the Works are to be undertaken) then the Client warrants that it has obtained the full consent of the owner for Kingfisher Plumbing to provide the Works to the owner’s land and premises. The Client acknowledges and agrees that it shall be personally liable for full payment of the Price for all Works provided under this contract and to indemnify Kingfisher Plumbing against any claim made by the owner of the site (howsoever arising) in relation to the provision of the Works by Kingfisher Plumbing, except where such claim has arisen because of the negligence of Kingfisher Plumbing when providing the Works.
- 2.8 The Client agrees that they shall, upon request from Kingfisher Plumbing, provide evidence that:
- (a) they are the owner of the land and site upon which the Works are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Works to be undertaken at the land and site.
- 2.9 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.

3. Authorised Representative

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Kingfisher Plumbing as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the works on the Client’s behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies Kingfisher Plumbing in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise Kingfisher Plumbing in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Kingfisher Plumbing for all additional costs incurred by Kingfisher Plumbing (including Kingfisher Plumbing’s profit margin) in providing any works, materials, Works or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Kingfisher Plumbing 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 Kingfisher Plumbing 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 Kingfisher Plumbing in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Kingfisher Plumbing; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give Kingfisher Plumbing 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 or fax

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number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Kingfisher Plumbing as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At Kingfisher Plumbing's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by Kingfisher Plumbing to the Client in respect of Works performed or Materials supplied; or
 - (b) Kingfisher Plumbing's quoted Price (subject to clause 6.2) which shall be binding upon Kingfisher Plumbing provided that the Client shall accept Kingfisher Plumbing's quotation in writing within thirty (30) days.
- 6.2 Kingfisher Plumbing 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) 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/building defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos), prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cablings, etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Kingfisher Plumbing in the cost of labour or materials which are beyond Kingfisher Plumbing's control.
- 6.3 Variations will be charged for on the basis of Kingfisher Plumbing's quotation, and will be detailed in writing, and shown as variations on Kingfisher Plumbing's invoice. The Client shall be required to respond to any variation submitted by Kingfisher Plumbing within ten (10) working days. Failure to do so will entitle Kingfisher Plumbing 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 Kingfisher Plumbing's sole discretion, a 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 Kingfisher Plumbing, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Kingfisher Plumbing'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;
 - (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (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 Kingfisher Plumbing.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Kingfisher Plumbing.
- 6.7 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 Kingfisher Plumbing nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Kingfisher Plumbing an amount equal to any GST Kingfisher Plumbing must pay for any supply by Kingfisher Plumbing 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 Works

- 7.1 Subject to clause 7.2 it is Kingfisher Plumbing'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 Kingfisher Plumbing claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Kingfisher Plumbing's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Kingfisher Plumbing that the site is ready.
- 7.3 Kingfisher Plumbing 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.
- 7.4 Any time specified by Kingfisher Plumbing for delivery of the Works is an estimate only and Kingfisher Plumbing 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 Kingfisher Plumbing is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Kingfisher Plumbing 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. Delivery and Risk

- 8.1 If Kingfisher Plumbing retains ownership of the Materials under clause 11 then:
- (a) where Kingfisher Plumbing 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 the Materials are delivered by Kingfisher Plumbing or Kingfisher Plumbing's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Kingfisher Plumbing is to both supply and install Materials then Kingfisher Plumbing shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 At Kingfisher Plumbing's sole discretion, the cost of delivery is included in the Price.

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- 8.3 Notwithstanding the provisions of clause 8.1 if the Client specifically requests Kingfisher Plumbing to leave Materials outside Kingfisher Plumbing'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.
- 8.4 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Client, Kingfisher Plumbing is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by Kingfisher Plumbing is sufficient evidence of Kingfisher Plumbing's rights to receive the insurance proceeds without the need for any person dealing with Kingfisher plumbing to make further enquiries
- 8.5 Kingfisher Plumbing 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, Kingfisher Plumbing accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 In the event that the Client requests Kingfisher Plumbing to use drain/pipe unblocking equipment, and Kingfisher Plumbing does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, Kingfisher Plumbing 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.
- 8.7 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Kingfisher Plumbing against any costs incurred by Kingfisher Plumbing as a consequence of such discovery. Under no circumstances will Kingfisher Plumbing handle removal of asbestos product
- 8.8 The Client acknowledges and agrees that where Kingfisher Plumbing has performed temporary repairs that:
- Kingfisher Plumbing offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - Kingfisher Plumbing will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 8.9 The Client acknowledges that:
- Kingfisher Plumbing is only responsible for components that are replaced by Kingfisher Plumbing 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 found to be the source of the failure;
 - where the Client has supplied goods for Kingfisher Plumbing to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those goods; and
 - Kingfisher Plumbing 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; and
 - the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Kingfisher Plumbing is requested to merely clear such blockages, Kingfisher Plumbing can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Kingfisher Plumbing 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 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 or latent or unfavourable soil conditions such as liquefaction residue or risk) that Kingfisher Plumbing, or Kingfisher Plumbing employees, reasonably form the opinion that the Client's premises is not safe for the Works to proceed then Kingfisher Plumbing shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 7.2 above) until Kingfisher Plumbing is satisfied that it is safe for the installation to proceed.

9. Client's Responsibilities

- 9.1 Prior to Kingfisher Plumbing commencing the Works the Client must advise Kingfisher Plumbing of the precise location of all services on the site and clearly mark the same. The mains and 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 the site. Whilst Kingfisher Plumbing will take all care to avoid damage to any underground services, the Client agrees to indemnify Kingfisher Plumbing 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 this clause 9.1.
- 9.2 It is the intention of Kingfisher Plumbing, and agreed by the Client, that it is the responsibility of the Client to:
- ensure that Kingfisher Plumbing has clear and free access to the site at the agreed date/s and time/s to enable Kingfisher Plumbing to undertake the Works. Kingfisher Plumbing 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 Kingfisher Plumbing's negligence;
 - provide Kingfisher Plumbing with facilities, as specified by the Builder, (including, but not limited to, a suitable free power source) for the duration of the Works.

10. Compliance with Laws

- 10.1 The Client and Kingfisher Plumbing shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
- 10.2 Kingfisher Plumbing 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, Kingfisher Plumbing shall not be the person who controls the place of work in terms of the HSW Act.
- 10.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works
- 10.4 The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the site that is subject to the Materials and/or Works is in compliance with regulations. Kingfisher Plumbing reserves the right to halt all Works (in accordance with the provisions of clause 7.2 above) 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.

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Should the Client not wish to proceed Kingfisher Plumbing will charge a standard fee for the time spent on site based on Kingfisher Plumbing's quotation.

11. Title

- 11.1 Kingfisher Plumbing and the Client agree that ownership of the Materials shall not pass until:
- the Client has paid Kingfisher Plumbing all amounts owing to Kingfisher Plumbing; and
 - the Client has met all of its other obligations to Kingfisher Plumbing.
- 11.2 Receipt by Kingfisher Plumbing 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.
- 11.3 It is further agreed that:
- until ownership of the Materials passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Kingfisher Plumbing on request.
 - the Client holds the benefit of the Client's insurance of the Materials on trust for Kingfisher Plumbing and must pay to Kingfisher Plumbing the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - the production of these terms and conditions by Kingfisher Plumbing shall be sufficient evidence of Kingfisher Plumbing's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Kingfisher Plumbing to make further enquiries.
 - 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 Kingfisher Plumbing and must pay or deliver the proceeds to Kingfisher Plumbing on demand.
 - 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 Kingfisher Plumbing and must sell, dispose of or return the resulting product to Kingfisher Plumbing as it so directs.
 - unless the Materials have become fixtures the Client irrevocably authorises Kingfisher Plumbing to enter any premises where Kingfisher Plumbing believes the Materials are kept and recover possession of the Materials.
 - Kingfisher Plumbing may recover possession of any Materials in transit whether or not delivery has occurred.
 - 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 Kingfisher Plumbing.
 - Kingfisher Plumbing may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

12. Personal Property Securities Act 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to Kingfisher Plumbing for Works – that have previously been supplied and that will be supplied in the future by Kingfisher Plumbing to the Client.
- 12.2 The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Kingfisher Plumbing may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, Kingfisher Plumbing 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;
 - 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 Kingfisher Plumbing; and
 - immediately advise Kingfisher Plumbing 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.
- 12.3 Kingfisher Plumbing and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Kingfisher Plumbing, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Kingfisher Plumbing under clauses 12.1 to 12.5.

13. Security and Charge

- 13.1 In consideration of Kingfisher Plumbing 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).
- 13.2 The Client indemnifies Kingfisher Plumbing from and against all Kingfisher Plumbing's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Kingfisher Plumbing's rights under this clause.
- 13.3 The Client irrevocably appoints Kingfisher Plumbing and each director of Kingfisher Plumbing as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects In Materials and Returns

- 14.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Kingfisher Plumbing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Kingfisher Plumbing 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 Kingfisher Plumbing has agreed in writing that the Client is entitled to reject, Kingfisher Plumbing's liability is limited to either (at Kingfisher Plumbing's discretion) replacing the Materials or repairing the Materials.
- 14.2 Materials will not be accepted for return other than in accordance with 14.1 above.

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14.3 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

15. Warranties

15.1 Subject to the conditions of warranty set out in clause 15.2 Kingfisher Plumbing warrants that if any defect in any workmanship of Kingfisher Plumbing becomes apparent and is reported to Kingfisher Plumbing within twelve (12) months of the date of delivery (time being of the essence) then Kingfisher Plumbing will either (at Kingfisher Plumbing's sole discretion) replace or remedy the workmanship.

15.2 The conditions applicable to the warranty given by clause 15.1 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 provided by Kingfisher Plumbing; 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 Kingfisher Plumbing shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Kingfisher Plumbing's consent.

(c) in respect of all claims Kingfisher Plumbing 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.

15.3 For Materials not manufactured by Kingfisher Plumbing, the warranty shall be the current warranty provided by the manufacturer of the Materials. Kingfisher Plumbing 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.

15.4 To the extent permitted by statute, no warranty is given by Kingfisher Plumbing as to the quality or suitability of the Materials for any purpose and any implied warranty, is expressly excluded. Kingfisher Plumbing shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

15.5 In the case of second hand Materials, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Kingfisher Plumbing as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Kingfisher Plumbing shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

16. Consumer Guarantees Act 1993

16.1 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 Kingfisher Plumbing to the Client.

17. Default and Consequences of Default

17.1 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 Kingfisher Plumbing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes Kingfisher Plumbing any money the Client shall indemnify Kingfisher Plumbing from and against all costs and disbursements incurred by Kingfisher Plumbing in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Kingfisher Plumbing's collection agency costs, and bank dishonour fees).

17.3 Further to any other rights or remedies Kingfisher Plumbing may have under this contract, if a Client has made payment to Kingfisher Plumbing, 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 Kingfisher Plumbing under this clause 17, 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.

17.4 Without prejudice to Kingfisher Plumbing's other remedies at law Kingfisher Plumbing shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Kingfisher Plumbing shall, whether or not due for payment, become immediately payable if:

(a) any money payable to Kingfisher Plumbing becomes overdue, or in Kingfisher Plumbing'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 Kingfisher Plumbing;

(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.

18. Cancellation

18.1 Without prejudice to any other remedies Kingfisher Plumbing may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Kingfisher Plumbing may suspend or terminate the supply of Works to the Client. Kingfisher Plumbing will not be liable to the Client for any loss or damage the Client suffers because Kingfisher Plumbing has exercised its rights under this clause.

18.2 Kingfisher Plumbing 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 Kingfisher Plumbing shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Kingfisher Plumbing for Works already performed. Kingfisher Plumbing shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 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 Kingfisher Plumbing as a direct result of the cancellation (including, but not limited to, any loss of profits).

19. Construction Contracts Act 2002

19.1 The Client hereby expressly acknowledges that:

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- (a) Kingfisher Plumbing 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 Kingfisher Plumbing by a particular date; and
 - (iv) Kingfisher Plumbing has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Kingfisher Plumbing 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 Kingfisher Plumbing exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Kingfisher Plumbing under the Contractual Remedies Act 1979; or
 - (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 Kingfisher Plumbing suspending work under this provision.

20. Privacy Act 1993

20.1 The Client authorises Kingfisher Plumbing or Kingfisher Plumbing'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 Kingfisher Plumbing from the Client directly or obtained by Kingfisher Plumbing 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.

20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.

20.3 The Client shall have the right to request Kingfisher Plumbing for a copy of the information about the Client retained by Kingfisher Plumbing and the right to request Kingfisher Plumbing to correct any incorrect information about the Client held by Kingfisher Plumbing.

21. Service of Notices

21.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Trusts

22.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Kingfisher Plumbing may have notice of the Trust, the Client covenants with Kingfisher Plumbing as follows:

- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) The Client will not without consent in writing of Kingfisher Plumbing (Kingfisher Plumbing will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

23. General

23.1 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.

23.2 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 courts of Tauranga.

23.3 Kingfisher Plumbing 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 Kingfisher Plumbing of these terms and conditions (alternatively Kingfisher Plumbing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

23.4 Kingfisher Plumbing may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

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- 23.5 The Client cannot licence or assign without the written approval of Kingfisher Plumbing.
- 23.6 Kingfisher Plumbing 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 Kingfisher Plumbing's sub-contractors without the authority of Kingfisher Plumbing.
- 23.7 The Client agrees that Kingfisher Plumbing 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 Kingfisher Plumbing to provide Works to the Client.
- 23.8 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.
- 23.9 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.