

# Flow Pipeline Limited

## Terms of Trade

### 1. Definitions

- 1.1 'Flow Pipeline Limited', 'Flow Plumbing Limited' (or any other such substituted Company or entity), or any agents or employees thereof, shall herein after be referred to as the 'Company'.
- 1.2 'Customer' shall mean the customer (or any person acting on behalf of and with the authority of the customer) as described on any quotation or such like.
- 1.3 'Goods' means all products and materials supplied by the Company to the Customer at any time and includes goods described on any invoice, quotation or such like provided to the Customer.
- 1.4 'Services' shall mean all services supplied by the Company to the Customer.
- 1.5 'Works' shall mean all works completed by the Company to the Customer.
- 1.6 'Price' shall mean the price payable for the provision of Goods and Services as agreed between the Company and the Customer.

### 2. Acceptance

- 2.1 Any agreement between the Company to supply Goods and/or Services to the Customer in any form shall constitute a binding contract ("the Contract") and acceptance of the terms and conditions contained herein.
- 2.2 The Customer is deemed to have received these Terms of Trade:
- (a) When left at the deliver address of the Customer; or
- (b) Five (5) business days after being put in the post, postage prepaid, and addressed to the Customer at the Customer's postal address; or
- (c) When sent to the email address provided by the Customer.

### 3. Quotations

- 3.1 Where a quotation has been provided by the Company to the Customer, that quotation remains valid for 30 working days and must be accepted in writing by the Customer prior to commencement of any Services/Works. The quotation may be withdrawn by the Company at any time before acceptance by the Customer.
- 3.2 All quotations are based on costs and charges ruling at the date of the quotation. Any changes in costs arising from sources beyond the control of the Company (for example, changes in prices charged by suppliers) shall be borne by the Customer.
- 3.3 If additional work, or revised works, not specified in the original quotation is required, the Company will provide the Customer with a revised quotation or price estimate.
- 3.4 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.

### 4. Price and Payment

- 4.1 Notwithstanding any estimate given, unless the Company has agreed in writing to be bound by a set Price or quotation for the Works, the Customer shall pay to the Company the actual cost of completing the Works which will be calculated by the Company totalling the following:
- (a) The total number of hours of service multiplied by the hourly rate of the Company's employee(s) involved in delivering or performing the Goods and/or Services to the Customer;
- (b) Any disbursements (including, but not limited to, any delivery costs, travel and accommodation and any other costs applicable to the supply of the Works and Services) incurred by the Company on the Customer's behalf;
- (c) The cost of any Goods supplied by the Company to the Customer as part of the Works.
- 4.2 The Price shall be as indicated on an invoice provided by the Company to the Customer, or as quoted in accordance with clause 3 above.
- 4.3 The Company reserves the right to change the Price in the event of a variation to the original quotation. Any variation from the plan of scheduled works or specifications will be charged for and shown as a variation to the original invoice.
- 4.4 Payment of any invoice delivered by the Company to the Customer is due and payable for domestic Customers no later than seven (7) working days after receipt of the invoice, and for commercial Customers no later than the 20th of the month following the date of supply.
- 4.5 Where Works are undertaken over a period exceeding one month, invoices may be issued for progress payments covering works done and costs incurred up to the date of the invoice. Such payment claims may include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.
- 4.6 If the Customer disagrees for any reason with the claimed amount, the Customer must respond to the Company in writing before payment is due. The parties will work together in good faith to resolve any disputes promptly.
- 4.7 If the Customer fails to make payment of any invoice on the due date specified on the invoice, then the Company, at its sole discretion, may charge default interest at a rate of 1.75% which shall accrue on a monthly basis and will be calculated from the due date of the invoice up until the date of payment in full. The Customer will also be responsible for all the Company's administrative charges and legal costs on a solicitor/client basis in relation to collection of unpaid invoices.
- 4.8 The Company, at its sole discretion, may agree to allow the Customer to make time payments on any invoice amount on terms and conditions acceptable to the Company in all respects ("Company Loan"). The terms and conditions of the Company Loan are to be determined at the Company's sole discretion and include (but not limited to), the term of the arrangement, the interest rate payable and the Company's ability to charge administration fees. Should the Customer be agreeable to the terms and conditions of the Company Loan, then the following shall apply:
- (a) The Company shall draft a loan agreement specifying the agreed terms and conditions of the Company Loan ("the Loan Agreement").
- (b) The Customer shall sign and return a copy of the Loan Agreement to the Company.
- (c) The terms and conditions of the Loan Agreement shall not be treated as a waiver, nor shall it affect the Company's right to subsequently enforce any provision contained in these Terms of Trade. Further, should the Customer default under the terms and conditions of the Company Loan, then the Company reserves the right to charge default interest in accordance with clause 4.7 above and allows the Company to register a security interest in its favour as security for the Company Loan in accordance with clause 7.0 contained herein.

### 5. Default

- 5.1 The security interests described in clause 7 herein, created by these Terms of Trade become enforceable if any of the following events occur:
- 5.2 The Customer fails to pay any money owing on the due date of the invoice supplied to the Customer;
- (a) The Customer sells, parts with any possessions or disposes of any Goods or does anything inconsistent with the Company's ownership of the Goods prior to making payment to the Company in full;
- (b) The Company believes you have committed or will commit an act of bankruptcy, have had or are about to have a receiver



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or liquidator appointed, or are declared insolvent;

(c) The Goods are at risk, as that term is defined in the Personal Property Securities Act 1999 ("P.P.S.A.");

(d) The Customer is otherwise in breach of their obligations under these Terms of Trade.

5.3 If any of the events described in clause 5.2 above occur, then the Company, at its sole discretion, may:

(a) Suspend the Works;

(b) Charge default interest in accordance with clause 4.6 above;

(c) Enter on to the Customer's premises and repossess any Goods which have not been paid for in full;

(d) Immediately terminate these Terms of Trade by notice in writing to you.

### 6. Risk and Ownership

6.1 All risk for the Goods passes to the Customer on delivery. If any loss arises from theft, destruction or damage from whatever cause following delivery but prior to ownership passing to the Customer, then the Company is entitled to receive all insurance proceeds payable for the Goods.

6.2 Ownership in the Goods shall not pass from the Company to the Customer until the Goods have been paid for in full. Receipt by the Company of any form of payment other than cash shall not constitute payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership rights of the Goods shall continue.

6.3 It is agreed between the Company and the Customer that:

(a) Where practicable the Goods shall be kept separate and identifiable until payment is received;

(b) Until such time as ownership of the Goods shall pass to the Customer, the Company may give notice in writing to the Customer to return the Goods. Upon such notice being given the rights of the Customer to obtain ownership of the Goods shall cease;

(c) The Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods, the Customer shall hold any proceeds from the sale of the Goods on trust for the Company;

(d) Until such time as ownership of the Goods shall pass to the Customer, if the Goods are converted into other products, the parties agree that the Company shall be the owner of the end products; and

(e) If the Customer fails to return the Goods then the Company may enter upon the land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods and the Company will not be held liable for any reasonable loss or damage suffered as a result of any action of the Company under this clause.

### 7. P.P.S.A

7.1 Upon assenting to these Terms of Trade the Customer agrees that these terms constitute a security agreement for the purposes of the P.P.S.A and that a security interest is taken in all Goods supplied by the Company to the Customer.

7.2 The Customer agrees to:

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register ("P.P.S.R");

(b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the P.P.S.R or releasing any Goods charged thereby;

(c) not register a financing change statement or a change demand without the prior written consent of the Company; and

(d) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

7.3 The Company and the Customer agree that nothing in sections 114 (1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

7.5 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the P.P.S.A.

7.6 The Customer shall unconditionally ratify any actions taken by the Company under clauses 7.1 to 7.5.

### 8. Warranty

8.1 The Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within 12 months of the date of delivery then the Company will either (at the Companies sole discretion) replace or remedy the defective workmanship.

8.2 The conditions applicable to the warranty provided in clause 8.1 are:

(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through failure on the part of the Customer to properly maintain any Goods, to follow any instructions or guidelines given by the Company, use of the Goods otherwise than any application specified on a quote or such like, the continued use of the Goods after any defect becomes apparent or from wear and tear or any accident;

(b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired or altered without the Company's consent;

(c) In respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship.

8.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods.

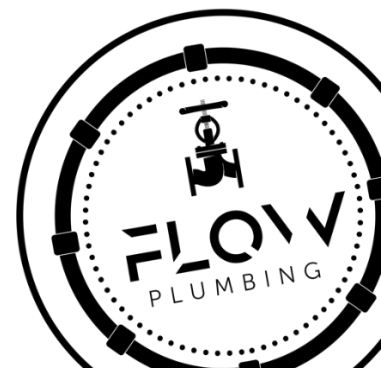
8.4 In the case of second-hand Goods, the Customer acknowledges that it had full opportunity to inspect the same and that it accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for purpose and any implied warranty is expressly excluded.

### 9. Consumer Guarantees Act

9.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Customer.

### 10. Cancellation

10.1 In addition to all other rights and remedies available in law, the Company may cancel any contract to which these Terms of Trade apply by giving written notice to the Customer. Upon giving of such notice, all obligations owed by the Company to the Customer shall cease immediately and the Company shall repay to the Customer any amount paid in respect of the Price.



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The Company shall not be liable for any loss or damage arising from such cancellation.

10.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by the Company (including but not limited to loss of profits) up to the time of cancellation.

### 11. Privacy Act

11.1 The Customer authorises the Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customers credit worthiness, enforcing any rights under these Terms of Trade or marketing any Goods and Services provided by the Company to the Customer.

11.2 The Customer authorises the Company to disclose any information obtained to any person for the purposes set out in clause 11.1.

11.3 Where the Customer is a natural person the authorities under clauses 11.1 and 11.2 are authorities or consents for the purpose of the Privacy Act 1993.

### 12. Liability

12.1 The Company's liability shall be limited to the value of the Goods supplied.

12.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations on the Company which cannot by law be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Company, the Company's liability shall, where it is allowed, be excluded or only apply to the minimal extent required by the relevant statute.

12.3 Except as otherwise provided, the Company shall not be liable for any loss or damage of any kind whatsoever arising from the provision of Goods and Services to the Customer including consequential loss whether suffered or incurred by the Customer or another person whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss arises directly or indirectly from Goods and Services provided by the Company to the Customer.

### 13. Disputes

13.1 In the event of a dispute arising between the Company and the Customer, such dispute shall in the first instance be referred to mediation for resolution.

13.2 In the event that a resolution cannot be reached at mediation within 30 days of referral to mediation, either party may take legal action to resolve the dispute.

13.3 Nothing in this clause prevents the Company from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

13.4 The Customer shall pay or reimburse all costs and expenses incurred by the Company in instructing a Solicitor or Debt collection Agency to recover any amount overdue for payment.

### 14. Force Majeure

14.1 The Company will not be liable for any delay in shipment, non-delivery of Goods and Services or any failure to perform any of its obligations by circumstances beyond its control.

### 13. General

13.1 The Customer shall be solely responsible for obtaining any necessary consent under and for compliance with all legislation, regulation or rules having the force of law in connection with the installation, operation and provision of the Goods and Services.

13.2 The Company shall be entitled to rely on the accuracy of and shall not be obliged to check any plans, specifications and other information supplied by the Customer. The Company shall bear no responsibility for any goods supplied in compliance with those plans and specifications.

13.3 Neither the Company nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.

13.4 The Construction Contracts Act 2002 applies where applicable.

13.5 These Terms of Trade constitute the entire agreement and supersede and extinguish all prior agreements between the Company and the Customer.

13.6 These Terms of Trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction in relation to any dispute.

13.7 Where there is more than one Customer (whether the Customer is an individual or a company) acquiring Goods and/or Services with the Company, then the Customer(s) shall be jointly and severally liable with each other.

13.8 The Company shall be entitled to, at any time by notice in writing to the Customer, vary any provision of these Terms of Trade and the Customer shall be bound by any such variation.

