

# Bishop Plumbing and Gas Limited | Terms and Conditions of Trade

## 1. Definitions

- 1.1 "Bishop P & G Ltd" means Bishop Plumbing and Gas Limited, its successors and assigns or any person acting on behalf of and with the authority of Bishop Plumbing and Gas Limited.
- 1.2 "Client" means the person/s ordering the Works as specified in any Invoice, document or order. If there is more than one Client then Client 1 is a liable for the costs incurred by Bishop P & G Ltd for each additional each Client jointly and severally.
- 1.3 "Works" means all Works or Materials supplied by Bishop P & G Ltd 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 for the Works as agreed between Bishop P & G Ltd 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 Bishop P & G Ltd consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Bishop P & G Ltd.
- 2.3 If for any reason (including the discovery of asbestos, defective structures, or dangerous access to roofing) Bishop P & G Ltd or its employees reasonably form the opinion that the Client's premises is not safe for the installation of Materials and/or provision of the Works to proceed, then Bishop P & G Ltd shall be entitled to delay all Works (in accordance with the provisions of clause (7.2) until Bishop P & G Ltd is satisfied that it is safe for the Works to proceed.
- 2.4 Where the Client instructs Bishop P & G Ltd to perform any repairs or other Works contrary to Bishop P & G Ltd's recommendation, or where the Client does not act upon any other advice or recommendation given by Bishop P & G Ltd in relation to the Works, then Bishop P & G Ltd shall require the Client or their agent to authorise commencement of the Works in writing. Bishop P & G Ltd shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works.
- 2.5 The Client accepts and acknowledges that a minimum call-out fee applies for any Works performed by Bishop P & G Ltd. Such call out fee shall be equal to one (1) hour's labour charge at \$80.00 per hour (within normal working hours) for plumbing/drain laying and \$90.00 per hour for gas fitting. Thereafter the first hour charged in fifteen (15) minute increments, plus GST, travel costs and parts.
- 2.6 The Client accepts and acknowledges that for after hours call-outs there is a minimum charge of one (1) hour labour charged at two hundred dollars (\$200.00) for the first hour and one hundred and twenty dollars (\$120.00) per hour thereafter charged in fifteen (15) minute increments, plus GST travel costs, plus parts.
- 2.7 The Client accepts and acknowledges that for Statutory Holidays call-outs there is a minimum charge of one (1) hour labour charged at Three hundred and twenty dollars (\$320.00) for the first hour and one hundred and sixty dollars (\$160.00) per hour thereafter charged in fifteen (15) minute increments, plus GST, travel costs, plus parts.
- 2.8 The client acknowledges that for the circumstances in clauses 2.6 and 2.7 the Bishop P & G Ltd staff attending may (at their discretion) require the call out fee to be paid prior to any works being commenced.

## 3 Price and Payment

- 3.1 At Bishop P & G Ltd's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by Bishop P & G Ltd to the Client in respect of Works performed or Materials supplied; or
  - (b) Bishop P & G Ltd's quoted Price (subject to clause 3.2) which shall be binding upon Bishop P & G Ltd provided that the Client shall accept Bishop P & G Ltd's quotation in writing within thirty (30) days.
- 3.2 Bishop P & G Ltd 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, availability of machinery, safety

considerations, prerequisite work by any third party-not being completed, obscured building defects, change of design and/or specifications, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works: or

- (d) in the event of increases to Bishop P & G Ltd in the cost of labour or materials which are beyond Bishop P & G Ltd's control.
- 3.3 At Bishop P & G Ltd's sole discretion a non-refundable deposit may be required.
- 3.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Bishop P & G Ltd, which may be:
  - (a) on completion of the Works: or
  - (b) failing any notice to the contrary, the date which is five (5) days following the date of any Invoice given to the Client by Bishop P & G Ltd.
- 3.5 Payment may be made by electronic/online banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and Bishop P & G Ltd.
- 3.6 Unless otherwise stated the Price does not include GST.

## 4. Delivery of the Works

- 4.1 Subject to clause 3.2 it is Bishop P & G Ltd's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 4.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Bishop P & G Ltd claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Bishop P & G Ltd'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 Bishop P & G Ltd that the site is ready.
- 4.3 Bishop P & G Ltd 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.
- 4.4 Any time or date given by Bishop P & G Ltd to the Client is an estimate only. Bishop P & G Ltd shall not be liable for any loss or damage whatsoever due to failure by Bishop P & G Ltd to deliver the Works (or any part of them) promptly or at all, if there are circumstances beyond the reasonable control of Bishop P & G Ltd that prevent delivery.

## 5. Risk

- 5.1 If Bishop P & G Ltd retains ownership of the Materials under clause 10 "Title" then:
  - (a) where Bishop P & G Ltd 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 either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials at Bishop P & G Ltd's address: or
    - (ii) The Materials are delivered by Bishop P & G Ltd or its nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) Where Bishop P & G Ltd is to both supply and install Materials then Bishop P & G Ltd 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.
- 5.2 The Client acknowledges that Materials (including but not limited to paint, timber, granite, tiles & concrete) supplied may:
  - (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour overtime; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances;
  - (d) and be damaged or disfigured by impact or scratching.
- 5.3 Where Bishop P & G Ltd is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Bishop P & G Ltd shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work

incidental thereto.

- 5.4 Where the Client has supplied Materials for Bishop P & G Ltd to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Bishop P & G Ltd shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof, howsoever arising from the use of materials supplied by the Client.
- 5.5 The Client acknowledges that Bishop P & G Ltd is only responsible for parts that are replaced by Bishop P & G Ltd and that in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify Bishop P & G Ltd against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 5.6 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipework and therefore where Bishop P & G Ltd is requested to merely clear such blockages, Bishop P & G Ltd can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Bishop P & G Ltd will immediately advise the Client of damaged pipework and shall provide the Client with an estimate for the full repair of the damaged pipework.
- 5.7 The Client agrees that in the event that Bishop P & G Ltd's drain/pipe unblocking equipment becomes lodged or stuck whilst cleaning any blockages in the line and/or is damaged on the Client's premises, the Client is responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 5.8 In the event that the Client requests Bishop P & G Ltd to provide temporary repairs, any such repair and/or installation shall be done at the Client's risk. Bishop P & G Ltd shall accept no liability whatsoever for any resulting damage, indirect and/or consequential loss and/or expense incurred as a result of such action.

## 6. Access

- 6.1 The Client shall ensure that Bishop P & G Ltd has clear and free access to the worksite at all times to enable them to undertake the Works. Bishop P & G Ltd shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Bishop P & G Ltd.

## 7. Underground Locations

- 7.1 Prior to Bishop P & G Ltd commencing any work the Client must advise Bishop P & G Ltd of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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 site.
- 7.2 Whilst Bishop P & G Ltd will take all care to avoid damage to any underground services the Client agrees to indemnify Bishop P & G Ltd 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 clause 7.1.

## 8. Accuracy of Client's Plans and Measurements

- 8.1 Bishop P & G Ltd 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, Bishop P & G Ltd accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

## 9. Compliance With Laws

- 9.1 The Client and Bishop P & G Ltd shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may apply to the Works.
- 9.2 The Client shall obtain (at the expense of the Client) all licences and approvals that may be required for the Works.
- 9.3 The Client agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## 10. Title

- 10.1 Bishop P & G Ltd and the Client agree that ownership of the Materials shall not pass until;

- (a) the Client has paid Bishop P & G Ltd all amounts owing to Bishop P & G Ltd: and
  - (b) the Client has met all of its other obligations to Bishop P & G Ltd.
- 10.2 Receipt by Bishop P & G Ltd 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. Personal Property Securities Act 1999 (“PPSA”)

- 11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security Interest is taken in all Materials and/or collateral (account) - being a monetary obligation of the Client to Bishop P & G Ltd for Works that have previously been supplied and that will be supplied in the future by Bishop P & G Ltd to the Client.
- 11.2 The Client undertakes 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 Bishop P & G Ltd may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Bishop P & G Ltd 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;
  - (c) 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 Bishop P & G Ltd : and
  - (d) Immediately advise Bishop P & G Ltd 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.
- 11.3 Unless otherwise agreed to in writing by Bishop P & G Ltd, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

## 12. Defects

- 12.1 The Client shall inspect the Materials/Works on delivery and shall immediately upon discovery, and in any case within thirty (30) days of delivery (time being of the essence), notify Bishop P & G Ltd of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.
- 12.2 If the Client believes the Materials/Works are defective in any way the Client shall immediately after notifying Bishop P & G Ltd of same, afford Bishop P & G Ltd an opportunity to inspect the Materials within a reasonable time following notification.
- If the Client shall fail to comply with these provisions the Materials/Works shall be presumed to be free from any defect or damage. For defective Materials, which Bishop P & G Ltd has agreed in writing that the Client is entitled to reject, Bishop P & G Ltd's liability is limited to either (at Bishop P & G Ltd's discretion) replacing the Materials or repairing the Materials.
- 12.3 Bishop P & G Ltd shall not be liable for any consequential loss or damage which may be attributed to the Client's failure to notify Bishop P & G Ltd of any alleged defect immediately upon discovery of such defect.

## 13. Returns

- 13.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) Bishop P & G Ltd has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Client's cost within thirty (30) days of the delivery date: and
  - (d) Bishop P & G Ltd will not be liable for Materials which have not been stored or have been used in an improper manner, and/or where any attempt has been made to modify the Materials, and/or rectify or repair any defect without Bishop P & G Ltd's express approval; and
  - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.2 Returned Materials may (at Bishop P & G Ltd's sole discretion), incur restocking and handling fees.

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

## 14. Warranties

- 14.1 For Materials not manufactured by Bishop P & G Ltd, the warranty shall be the current warranty provided by the manufacturer of the Materials. Bishop P & G Ltd 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.
- 14.2 To the extent permitted by statute, no warranty is given by Bishop P & G Ltd as to the quality or suitability of the Materials for any purpose and any implied warranty is expressly excluded. Bishop P & G Ltd shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.

## 15. Default and Consequences of Default

- 15.1 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 Bishop P & G Ltd's sole discretion such interest shall be compounded monthly at such a rate) after as well as before any judgement.
- 15.2 If the Client owes Bishop P & G Ltd any money the Client shall indemnify Bishop P & G Ltd from and against all costs and disbursements incurred by Bishop P & G Ltd in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bishop P & G Ltd's collection agency costs, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies Bishop P & G Ltd may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Bishop P & G Ltd may suspend or terminate the supply of Works to the Client. Bishop P & G Ltd will not be liable to the Client for any loss or damage the Client suffers because Bishop P & G Ltd has exercised its rights under this clause.

## 16. Cancellation

- 16.1 Bishop P & G Ltd 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 Bishop P & G Ltd shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Bishop P & G Ltd for Works already performed. Bishop P & G Ltd shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 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 Bishop P & G Ltd as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3 Cancellation of orders for products made and/or modified to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

## 17. Dispute Resolution

- 17.1 All disputes and differences between the Client and Bishop P & G Ltd touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or falling agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by the two arbitrators prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996. Each party is to pay their/its own costs of the arbitration notwithstanding the result.

## 18. Privacy Act 1993

- 18.1 The Client authorises Bishop P & G Ltd to access, collect, retain and use any information about the Client for Bishop P & G Ltd's present or future business with the Client.
- 18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client shall have the right to request Bishop P & G Ltd for a copy of the information about the Client retained by Bishop P & G Ltd and the right to request Bishop P & G Ltd to correct any incorrect information about the Client held by Bishop P & G Ltd.

## 19. Construction Contracts Act 2002

- 19.1 The Client hereby expressly acknowledges that:
- (a) Bishop P & G Ltd 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 Bishop P & G Ltd by a particular date; and
    - (iv) Bishop P & G Ltd has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) If Bishop P & G Ltd 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 or the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) If Bishop P & G Ltd exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to Bishop P & G Ltd 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 Bishop P & G Ltd suspending work under this provision.

## 20. General

- 20.1 The failure by Bishop P & G Ltd to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bishop P & G Ltd'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 use of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 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 Tauranga Courts of New Zealand.
- 20.3 Bishop P & G Ltd 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 Bishop P & G Ltd of these terms and conditions (alternatively Bishop P & G Ltd's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 20.4 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 Bishop P & G Ltd nor to withhold payment of any Invoice because part of that invoice is in dispute.
- 20.5 Bishop P & G Ltd may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.6 The Client agrees that Bishop P & G Ltd may amend those terms and conditions at any time. If Bishop P & G Ltd makes a change to these terms and conditions, then that change will take effect from the date on which Bishop P & G Ltd notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Bishop P & G Ltd to provide any Works to the Client.
- 20.7 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 events beyond the reasonable control of either party.
- 20.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, and that it is not insolvent/in liquidation and that this agreement creates binding and valid legal obligations on it.