

Terms of Trade

Standard terms and conditions

April 2019



The terms and conditions set out below apply to every supply of goods and services by Golden Bay Plumbing and Gas Limited to the Customer.

By ordering, utilising and/or requiring goods and/or services with Golden Bay Plumbing and Gas Limited the Customer agrees that it is bound by these terms and conditions and that the Customer's own terms and conditions do not apply.

1. Definitions

- 1.1. "Golden Bay Plumbing and Gas Limited" means Golden Bay Plumbing and Gas Limited trading as Golden Bay Plumbing & Gas, its successors and assigns or any person acting on behalf of and with the authority of Golden Bay Plumbing and Gas Limited.
- 1.2. "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer, as described on any quotation, work authorisation or other form provided by Golden Bay Plumbing and Gas Limited to the Customer.
- 1.3. "Guarantor" means the person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4. "Goods" means all Goods supplied by Golden Bay Plumbing and Gas Limited to the Customer (and where the context permits includes any supply of Services as defined below) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Golden Bay Plumbing and Gas Limited to the Customer.
- 1.5. "Services" means all services supplied by Golden Bay Plumbing and Gas Limited to the Customer and includes any advice or recommendations (and where the context permits includes any supply of Goods as defined above).
- 1.6. "Price" means the price payable for the Goods as agreed between Golden Bay Plumbing and Gas Limited and the Customer in accordance with clause 4 of this contract.

2. General

- 2.1. This contract is subject to the laws and statutes of New Zealand, and is subject to the jurisdiction of the court geographically closest to the physical address of Golden Bay Plumbing and Gas Limited.
- 2.2. Golden Bay Plumbing and Gas Limited may sub-contract any part of this contract. No sub-contractor has any authority to agree to any variation of this contract on behalf of Golden Bay Plumbing and Gas Limited.
- 2.3. Any instructions received by Golden Bay Plumbing and Gas Limited from the Customer for the supply of Goods will constitute acceptance of this contract.
- 2.4. Golden Bay Plumbing and Gas Limited may submit a detailed payment claim at intervals less than one (1) week for work performed up to the end of each week.
- 2.5. To end the contract, the Customer must give Golden Bay Plumbing and Gas Limited a signed notice giving the details of why the contract is being ended. Golden Bay Plumbing and Gas Limited is entitled to a reasonable price for any works completed, and materials ordered but not installed, as at the date the contract is ended.
- 2.6. Where a quotation is given, it will only be binding for twenty-eight (28) days from the date of issue. Where additional works are required the Customer agrees to pay the additional price for such works.

3. Acceptance

- 3.1. Any instructions received by Golden Bay Plumbing and Gas Limited from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Golden Bay Plumbing and Gas Limited will constitute acceptance of all of the terms and conditions in this contract.
- 3.2. Where more than one Customer has entered this agreement, the Customers will be jointly and severally liable for all payments of the Price.
- 3.3. Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding and can only be amended with the written consent of Golden Bay Plumbing and Gas Limited.
- 3.4. The Customer will give Golden Bay Plumbing and Gas Limited no less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or details (including, but not limited to, changes in the Customer's address, telephone number, email address or business practice). The Customer is liable for any loss incurred by Golden Bay Plumbing and Gas Limited as a result of the Customer's failure to comply with this clause.
- 3.5. Goods are supplied by Golden Bay Plumbing and Gas Limited only on the terms and conditions in this contract, to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions.

4. Price and Payment

- 4.1. At Golden Bay Plumbing and Gas Limited's sole discretion, the Price will be either:
 - 4.1.1. as indicated on invoices provided by Golden Bay Plumbing and Gas Limited to the Customer in respect of Goods supplied; or
 - 4.1.2. Golden Bay Plumbing and Gas Limited's current Price at the date of delivery of the Goods according to Golden Bay Plumbing and Gas Limited's current Price list; or
 - 4.1.3. Golden Bay Plumbing and Gas Limited's quoted Price (subject to clause 4.2) which is binding upon Golden Bay Plumbing and Gas Limited provided that the Customer accepts Golden Bay Plumbing and Gas Limited's quotation in writing within twenty-eight (28) days.
- 4.2. Golden Bay Plumbing and Gas Limited reserves the right to change the Price in the event of a variation to Golden Bay Plumbing and Gas Limited's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or as a result of increases to Golden Bay Plumbing and Gas Limited in the cost of materials and labour) will be charged for on the basis of Golden Bay Plumbing and Gas Limited's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3. At Golden Bay Plumbing and Gas Limited's sole discretion a deposit may be required.
- 4.4. At Golden Bay Plumbing and Gas Limited's sole discretion:
 - 4.4.1. payment is due on delivery of the Goods; or
 - 4.4.2. payment for approved Customers is due seven (7) days following the end of the month in which a statement is posted or emailed to the Customer's address or address for notices; or
 - 4.4.3. payment for approved Customers should be made by instalments in accordance with Golden Bay Plumbing and Gas Limited's payment schedule.
- 4.5. Golden Bay Plumbing and Gas Limited may submit detailed progress payment claims in accordance with Golden Bay Plumbing and Gas Limited's specified payment schedule.

Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

- 4.6. Time for payment for the Goods will be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment is due seven (7) days following the date of the invoice.
- 4.7. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and Golden Bay Plumbing and Gas Limited.
- 4.8. GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.

5. Default

- 5.1. Without prejudice to any other rights or remedies that Golden Bay Plumbing and Gas Limited may have against the Customer, the Customer agrees that in the event of default in payment by the Customer then the Customer agrees to pay on demand:
 - 5.1.1. all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by Golden Bay Plumbing and Gas Limited in recovering any amounts payable by the Owner to Golden Bay Plumbing and Gas Limited; and
 - 5.1.2. interest on the amount outstanding at the end of each month in which the Owners account is in arrears at the rate of two per cent (2%) per month (compounding) with such a rate after as well as before any judgement; and
 - 5.1.3. a monthly administration fee of twenty-five dollars (\$25) by way of damages payable on the last day of each month in which the Customers' account is in default.

6. Delivery of Goods

- 6.1. At Golden Bay Plumbing and Gas Limited's sole discretion, delivery of the Goods will take place when:
 - 6.1.1. the Customer takes possession of the Goods at Golden Bay Plumbing and Gas Limited's address; or
 - 6.1.2. the Customer takes possession of the Goods at the Customer's nominated address.
- 6.2. The Customer will make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Customer is unable to take delivery of the Goods as arranged then Golden Bay Plumbing and Gas Limited is entitled to charge a reasonable fee for redelivery.
- 6.3. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.4. The failure of Golden Bay Plumbing and Gas Limited to deliver does not entitle either party to treat this contract as repudiated.
- 6.5. Golden Bay Plumbing and Gas Limited is not liable for any loss or damage whatsoever due to failure by Golden Bay Plumbing and Gas Limited to deliver the Goods (or any of them) promptly or at all, if this is due to circumstances beyond the control of Golden Bay Plumbing and Gas Limited.

7. Risk

- 7.1. If Golden Bay Plumbing and Gas Limited retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 7.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Golden Bay Plumbing and Gas Limited is entitled to receive all

insurance proceeds payable for the Goods. The production of these terms and conditions by Golden Bay Plumbing and Gas Limited is sufficient evidence of Golden Bay Plumbing and Gas Limited's rights to receive the insurance proceeds without the need for any person dealing with Golden Bay Plumbing and Gas Limited to make further enquiries.

- 7.3. The Customer acknowledges and agrees that the presence of plant and/or tree root growth and/or blockages generally indicates damaged pipes. Accordingly, the Customer agrees that these pipes cannot be fixed by simply removing plant and/or tree root growth and/or cleaning the drain. No warranty is provided against the situation arising again in the future and in respect of any work carried out in relation to those pipes.
- 7.4. Where Golden Bay Plumbing and Gas Limited is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which those Goods are to be installed or erected is sound and will sustain the installation/s and work incidental to the installation/s. Golden Bay Plumbing and Gas Limited is not liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

8. Damages

- 8.1. The Customer will ensure that Golden Bay Plumbing and Gas Limited has clear and free access to the work site at all times to enable them to undertake the works. Golden Bay Plumbing and Gas Limited is not liable for any loss or damage to the site (including, but not limited to, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Golden Bay Plumbing and Gas Limited.

9. Underground locations

- 9.1. Prior to Golden Bay Plumbing and Gas Limited commencing any work the Customer must advise Golden Bay Plumbing and Gas Limited of the precise location of all underground services on the site and clearly mark them. The underground mains and services the Customer 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.
- 9.2. While Golden Bay Plumbing and Gas Limited will take all care to avoid damage to any underground services the Customer agrees to indemnify Golden Bay Plumbing and Gas Limited 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 9.1.

10. Title

- 10.1. Golden Bay Plumbing and Gas Limited and Customer agree that the ownership of the Goods will not pass until:
 - 10.1.1. the Customer has paid Golden Bay Plumbing and Gas Limited all amounts owing for the particular Goods; and
 - 10.1.2. the Customer has met all other obligations due by the Customer to Golden Bay Plumbing and Gas Limited in respect of all contracts between Golden Bay Plumbing and Gas Limited and the Customer.
- 10.2. Receipt by Golden Bay Plumbing and Gas Limited of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised. Until then Golden Bay Plumbing and Gas Limited's ownership or rights in respect of the Goods will continue.

- 10.3. It is further agreed that:
- 10.3.1. where practicable the Goods will be kept separate and identifiable until Golden Bay Plumbing and Gas Limited has received payment and all other obligations of the Customer are met; and
 - 10.3.2. until such time ownership of the Goods passes from Golden Bay Plumbing and Gas Limited to the Customer Golden Bay Plumbing and Gas Limited may give notice in writing to the Customer to return the Goods or any of them to Golden Bay Plumbing and Gas Limited. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods will cease; and
 - 10.3.3. the Customer is only a bailee of the Goods and until such time as Golden Bay Plumbing and Gas Limited has received payment in full for the Goods then the Customer will hold any proceeds from the sale of the disposal of the Goods, up to and including the amount the Customer owes to Golden Bay Plumbing and Gas Limited for the Goods, on trust for Golden Bay Plumbing and Gas Limited; and
 - 10.3.4. until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Golden Bay Plumbing and Gas Limited will be the owner of the end products; and
 - 10.3.5. if the Customer fails to return the Goods to Golden Bay Plumbing and Gas Limited then Golden Bay Plumbing and Gas Limited, or Golden Bay Plumbing and Gas Limited's agent may (as the invitee of the Customer) enter upon and into 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 Golden Bay Plumbing and Gas Limited will not be liable for any reasonable loss or damage suffered as a result of any action by Golden Bay Plumbing and Gas Limited under this clause.

11. Privacy Act

- 11.1. The Customer acknowledges that personal information collected or held by Golden Bay Plumbing and Gas Limited is provided and may be held, used and disclosed for the purpose of:
- 11.1.1. enabling Golden Bay Plumbing and Gas Limited to notify any credit agency of default on any obligation of the Customer to Golden Bay Plumbing and Gas Limited; and
 - 11.1.2. enabling Golden Bay Plumbing and Gas Limited to provide such personal information to any credit agency so such credit agency can maintain correct accounting records.

12. Customer's Disclaimer

- 12.1. The Customer disclaims any right to rescind or cancel any contract with Golden Bay Plumbing and Gas Limited or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Golden Bay Plumbing and Gas Limited.
- 12.2. The Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

13. Defects

- 13.1. The Customer will inspect the Goods on delivery and will, within seven (7) days of delivery, time being of the essence, notify Golden Bay Plumbing and Gas Limited of any alleged defect, shortage in quantity, damage or failure to comply with the description

or quotation. The Customer will afford Golden Bay Plumbing and Gas Limited an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods will be presumed to be free from any defect or damage. For defective Goods, which Golden Bay Plumbing and Gas Limited has agreed in writing that the Customer is entitled to reject, Golden Bay Plumbing and Gas Limited's liability is limited to either, at Golden Bay Plumbing and Gas Limited's discretion, replacing or repairing the Goods.

14. Returns

- 14.1. Returns will only be accepted if:
 - 14.1.1. the Customer has complied with the provisions of clause 13.1; and
 - 14.1.2. Golden Bay Plumbing and Gas Limited has agreed in writing to accept the return of the Goods; and
 - 14.1.3. the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - 14.1.4. Golden Bay Plumbing and Gas Limited will not be liable for Goods which have not been stored or used in a proper manner; and
 - 14.1.5. the Goods 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.
- 14.2. Golden Bay Plumbing and Gas Limited may, at its discretion, accept the return of Goods for credit but this may incur a handling fee of ten per cent (10%) of the value of the returned Goods plus any freight.
- 14.3. Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

15. Warranty

- 15.1. Subject to the conditions of warranty set out in clause 15.2, Golden Bay Plumbing and Gas Limited warrants that if any defect in any workmanship of Golden Bay Plumbing and Gas Limited becomes apparent and is reported to Golden Bay Plumbing and Gas Limited within twelve (12) months of the date of delivery, time being of the essence, then Golden Bay Plumbing and Gas Limited will either, at Golden Bay Plumbing and Gas Limited's sole discretion, replace or remedy the workmanship.
- 15.2. The conditions applicable to the warranty given by clause 15.1 are:
 - 15.2.1. the warranty does not cover any defect or damage which may be caused or partly caused by or arise through:
 - 15.2.1.1. failure on the part of the Customer to properly maintain any Goods; or
 - 15.2.1.2. failure on the part of the Customer to follow any instructions or guidelines provided by Golden Bay Plumbing and Gas Limited; or
 - 15.2.1.3. any use of any Goods otherwise than for any application specified on a quotation or order form; or
 - 15.2.1.4. the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - 15.2.1.5. fair wear and tear, any accident or act of God.
 - 15.2.2. The warranty will cease and Golden Bay Plumbing and Gas Limited will in no circumstances be liable under the terms of the warranty if the workmanship

is repaired, altered or overhauled without Golden Bay Plumbing and Gas Limited's consent.

- 15.2.3. In respect of all claims Golden Bay Plumbing and Gas Limited will not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3. For Goods not manufactured by Golden Bay Plumbing and Gas Limited, the warranty will be the current warranty provided by the manufacturer of the Goods. Golden Bay Plumbing and Gas Limited is not bound by, and is not responsible for, any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15.4. In the case of second hand Goods, the Customer acknowledges that it has had full opportunity to inspect the Goods and that the Customer accepts the same with all faults. No warranty is given by Golden Bay Plumbing and Gas Limited as to the quality or suitability of second hand Goods for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Golden Bay Plumbing and Gas Limited is not responsible for any loss or damage to the second hand Goods, or caused by the second hand Goods, or any part of the second hand Goods, however the loss or damage arises.