

TERMS OF TRADE

Golden Bay Plumbing and Gas Limited



1 Acceptance

- 1.1 These terms of trade apply to all services provided by us, unless otherwise agreed in writing. Engaging us to carry out work or accepting a quote or estimate provided by us constitutes acceptance by you of these terms.

2 Definitions

In these terms:

- 2.1 "Us" or "we" or "our" means Golden Bay Plumbing and Gas Limited (trading as Golden Bay Plumbing & Gas).
- 2.2 "You" or "your" means you, the person, company or partnership who has requested the services to be supplied by us and accepts these terms of trade, and includes your employees and authorised subcontractors.
- 2.3 "Goods" mean any goods supplied by us to you.
- 2.4 "Job" and "work" mean the services supplied by us pursuant to these terms of trade.
- 2.5 "Site" means the site address at which the work is to be carried out.
- 2.6 "Working day" has the meaning given in the Construction Contracts Act 2002 (CCA).

3 Responsibilities

3.1 We will:

- (a) carry out the work with reasonable skill and care, in accordance with the plans and specifications (if any), the Building Act 2004, the Building Code and any building consents issued in respect of the work; and
- (b) comply with all relevant health and safety legislation in carrying out the work, including having all appropriate site documentation carried out and checked on a regular basis.

3.2 You will:

- (a) ensure that all plans and specifications supplied to us for the work are accurate;
- (b) provide any materials, plant, and equipment required for the work that are to be supplied by you, and ensure that such materials comply with the Building Code and are fit for purpose, and all plant and equipment complies with all health and safety legislation, codes and requirements;
- (c) survey the site and advise us of boundaries and the specific location of underground utilities such as hidden mains and services; this includes but is 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. If required, you will provide us with a survey plan of the site;
- (d) ensure you have sufficient title or other legal entitlement to the site to allow the work to be carried out, and that we have sufficient access to the site or third party land to carry out the work;
- (e) advise us of any particular hazards relating to the site and existing structures, and take all practicable steps to ensure your own safety throughout the work and cooperate fully in implementing our health and safety and environmental policies and procedures and obligations under the relevant health and safety legislation;
- (f) ensure that you have sufficient funds or finance to meet your financial obligations when they fall due;
- (g) provide the correct billing information, contact information, and work order number (if required); and
- (h) obtain all necessary consents for the work (including for any variations) and obtain a code compliance certificate (if required) when the work is complete. To enable us to comply with our responsibilities, we may require that you provide us with a copy of all necessary consents before commencing the work.

4 Price

- 4.1 Our standard business hours are from 8am to 5pm Monday to Friday (excluding public holidays and our annual Christmas/New Year closedown period), and standard charges apply during these hours.
- 4.2 Work done outside of standard business hours is subject to an afterhours rate.
- 4.3 A minimum charge of one hour labour applies to all jobs. After the first hour our time will be charged in 15 minute increments.
- 4.4 Our labour time includes the time spent travelling to and from the site, and any time spent obtaining materials for the work.
- 4.5 All jobs will incur travel/vehicle charges for each trip made to the site. Additional travel/vehicle charges may be applied to cover trips to merchants to pick up materials.
- 4.6 Site visits may be charged when asked for consulting purposes. Consultation work may include advice on how to best carry out the work, advice on how to use goods we have not installed, advice on repairs for previous work not undertaken by us, insurance reports, and completing consent documentation on your behalf.

5 Payment

- 5.1 You will pay in full for the goods and services no later than the date specified on our invoice. Invoices become a receipt on payment in full.
- 5.2 Payments are to be made by electronic funds transfer to our nominated account, unless agreed otherwise.
- 5.3 Any amount which is not paid by the due date will incur interest at the rate of 2% per month compounding daily on the outstanding balance (both before or after any judgement, and in addition to any other rights and remedies). All costs incurred by us as a result of a default by you, including debt collection costs, and/or legal costs, are payable by you.
- 5.4 Progress payments cover the labour and materials for ongoing work done to date. You will pay progress invoices before or on the due date stipulated. Further services provided by us may be put on hold until a progress payment/s have been made by you.
- 5.5 We may require a deposit by from you prior to work starting or prior to obtaining goods required for the job. If the deposit is not paid in full 7 days prior to when the work is due to start, we may without further notice cancel the work. Such cancellation is without prejudice to any other rights and remedies.
- 5.6 We reserve the right to invoke the CCA in respect of any services pursuant to these terms to which the CCA may apply.
- 5.7 If an invoice is rendered in accordance with the payment claim provisions in the CCA, you are to provide a payment schedule which complies with the requirements of the CCA to us within 3 working days of service of the payment claim. If a payment schedule is not provided within this period, you are liable to pay the whole amount of the payment claim and cannot dispute any sum in that payment claim.
- 5.8 If you need to discuss any aspect of payment, or if you are dissatisfied with the invoice, it is your responsibility to contact us within 7 days of the invoice date.

6 Quotes, Estimates and Variations

- 6.1 If you ask us to price a job and a site visit is required, you may be charged for that site visit regardless of whether you accept the price or not.
- 6.2 An estimate is an approximate indication of the expected cost, not a fixed price.
- 6.3 All quotes and estimates are valid for 14 days, after which we reserve the right to amend if necessary to allow for price variances.
- 6.4 You may request variations to the work set out in our quote or estimate. Except for the variations set out in clause 6.5, all variations must in writing and contain the following:
 - (a) A description of the work required under the variation;
 - (b) Any required amendments to the consents as issued or any additional approvals, consents or licences that will be required; and
 - (c) Any agreed adjustment to the price and/or the completion date for the work.
- 6.5 Unless otherwise agreed, you may not request a variation omitting or reducing the services to be performed.
- 6.6 We are entitled to claim a variation for the following without your agreement:
 - (d) any emergency work required for health and safety or environmental reasons; including handling of hazardous substances (including asbestos);
 - (e) additional work and/or changes to the work caused by any consent requirements;

- (f) unforeseen physical conditions, substitutions of any materials, wages and price changes; or
 - (g) any increase in costs arising from a failure or delay on your part in complying with these terms.
- 6.7 All variations claimed under 6.3 and 6.5 will be charged at the standard hourly rate, standard travel costs and cost of materials.

7 Subcontractors

- 7.1 We may subcontract the whole or any portion of the work. We will be responsible for all work of our subcontractors and for ensuring that subcontractors have appropriate insurance in place.

8 Delay and extensions of time

- 8.1 We will not be liable for any delay in carrying out the work due directly or indirectly to circumstances reasonably outside of our control, including disputes with subcontractors, bad weather, force majeure, pandemics or epidemics, accidents, fire, shortage of labour and/or materials, labour disputes, variations, failure of suppliers to deliver, acts of any government, territorial authority or similar body, or unforeseen site conditions including the presence of asbestos and other contaminants.
- 8.2 If we have agreed to complete work within a specified timeframe, and extension of time is required due to any of the above reasons or any other reason beyond our reasonable control, we will provide written notice to you of any such extension reasonably promptly after we become aware of the delay, together with details of a new completion date.
- 8.3 You are not entitled to make any claim against us due to any of the reasons set out in clause 8.1 or their effects.

9 Insurance

- 9.1 You are responsible for insuring the work at the site, and we may at any time require that proof of such insurance is provided. We will arrange public liability insurance up to \$5,000,000 against liability for loss or damage to any property, or injury or death or illness which arises from carrying out the work.

10 Defects Warranty

- 10.1 If the work relates to a household unit, you may give notice of any defect within 12 months of completion of the work, and we will remedy those defects within a reasonable time of notification. You must notify us in writing of the defect as soon as possible after the defect becomes apparent.
- 10.2 We are not liable for any defect within reasonable tolerances or for any defect caused by or arising out of:
- (a) the actions of any person outside of our control;
 - (b) failure to properly maintain or use goods, services or systems in a manner they are intended to be used;
 - (c) failure to follow any instructions or guidelines provided by us or the manufacturer;
 - (d) the continual use of any goods, services or systems after any defect becomes apparent or would have been apparent to a reasonably prudent user;
 - (e) fair wear and tear;
 - (f) any accident or act of God; or
 - (g) repair, alteration or overhaul of the goods, system or services provided by anyone other than us or without our consent.
- 10.3 For goods supplied by us, we will use our best endeavours to enforce any guarantees or warranties given by the manufacturer of the goods supplied.
- 10.4 When we have agreed to use/install goods or materials supplied by you, these materials are not warranted by us and clauses 10.1 and 10.3 will not apply.
- 10.5 These terms do not limit the implied warranties as set out in s362I to s362K of the Building Act 2004.

11 Suspension and termination

- 11.1 We may suspend the work by notice if you default in any of your obligations under these terms, including failing or refusing to pay any invoiced amount in full by the due date for its payment. Such suspension is without prejudice to any other right to which we might be entitled.
- 11.2 We may terminate our obligations under these terms if at any time you become bankrupt, go into liquidation, have a receiver or statutory manager appointed, or default in your obligations under these terms and do not remedy that default within 5 working days of receiving a notice requiring remedy.
- 11.3 On termination under clause 11.2 all monies owed to us will be payable immediately.

12 Property on Site and Risk in the Work

12.1 You acknowledge that:

- (a) the legal, equitable and beneficial ownership and title to any plant, equipment or materials brought onto the site by us remain vested in us at all times;
- (b) ownership and title in all goods and materials supplied as part of the work remains vested in us until all amounts owing to us have been paid in full.

12.2 In the event of non-payment, we shall be entitled, without prejudice to any other rights or remedies we have, to enter the site for the purposes of recovering and taking possession of the property described in clause 12.1 (whether or not such property has been incorporated into the work) and/or commencing court proceedings to recover damages howsoever due to your default.

12.3 To secure such obligations, for the purposes of the Personal Property Securities Act 1999 (PPSA), you agree that a security interest is granted of the property described in clause 12.1 (and all proceeds of that property). All payments received may be applied by us in such manner as is desirable to preserve any purchase money security interest in that property. You agree that nothing in section 114(1)(a), 116, 117 (1)(a), 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies, and waive the right to receive a verification statement or financing change statement in respect of any security interest.

12.4 Goods are at the sole risk of you upon collection by you or your agent, or delivery to site whether received by you or not. Once collected or delivered, you will insure the goods for their full value against all causes, including loss or damage by fire and theft. If the goods are lost, damaged or destroyed, you agree to make a claim against the insurance policy.

12.5 Goods will only be accepted for return with our prior approval. Freight and all other costs associated with the return of goods will be at your expense unless otherwise agreed in writing with us.

12.6 You acknowledge and agree that the presence of plant and/or tree root growth and/or blockages often indicates damaged pipes. Accordingly, you agree that these pipes cannot be fixed by 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.

12.7 The installation of some appliances, fixtures and fittings can cause damage to existing pipework or plumbing systems. You agree to indemnify us against any such loss, damage or claim that may arise if the existing pipework is unable to accommodate the installation of the appliances, fixtures and/or fittings.

12.8 While we will take all care to avoid damage to any underground services, you agree to indemnify us against any such loss, damage or claim as a result of damage to services not precisely located and notified as per clause 3.2(c).

12.9 Risk in the work will pass to you when the work is completed at the site.

13 Limitation on liability

13.1 In addition to the other provisions relating to liability in these terms, we will have no liability to you other than in relation to direct reasonably foreseeable losses incurred by you as a result of our breach of these terms. We are not liable for any loss, liability or costs incurred by or any injuries suffered by you or any other person which are an unavoidable result of carrying out the work or remedying any defects in accordance with these terms.

13.2 Other than in relation to defects in the work as referred to in clause 10.1, you must lodge any claims with us within 3 months of the date of completion of the relevant part of the work otherwise any such claim will be regarded as invalid. Any claim submitted must be sufficiently detailed to clearly identify what aspect of the work is defective.

13.3 Our maximum liability for one claim or claims in the aggregate is the amount paid by you for the work.

13.4 You indemnify us in relation any losses, claims, damages or costs incurred by us as a result of your breach of these terms, or as otherwise due to your act, default, or omission and we reserve the right to claim against you in respect of the same.

14 Signage

14.1 You agree that we have the right to erect signage on the site advertising ourselves during the period of the work.

15 Notices

15.1 All notices are to be in writing and hand delivered or sent by post or email to our registered office address or office email address.

15.2 A notice is deemed to be received:

- (a) if personally delivered, when delivered; or
 - (b) if posted, 5 working days after posting; or
 - (c) if sent by email, when the email leaves the sender's communications system, provided that the sender:
 - (i) does not receive any error message relating to the sending of the email; or
 - (ii) receives confirmation that the email was delivered (which may include an automated delivery receipt from the recipient's communications system).
- 15.3 Despite clause 15.2, any notice received after 5pm, or received on a day that is not a working day, is deemed not to have been received until 9am on the next working day.

16 Dispute Resolution

- 16.1 If there is any dispute relating to these terms or the work, the party raising the dispute must give the other party written notice specifying particulars of the dispute.
- 16.2 If negotiations between the parties do not resolve the dispute, either party may refer a dispute to adjudication under the CCA or bring a claim before the Disputes Tribunal or the High Court, as appropriate.

17 Privacy Act 2020

- 17.1 You agree that we are authorised to:
- (a) access, collect and retain any information we may require about you; and
 - (b) use that information for the purpose of providing or obtaining a credit reference, debt collection, notification of a default, marketing or meeting anti-money laundering obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or any amendments to that Act.
- 17.2 You must notify us of any changes in circumstances that may affect the accuracy of the information provided by you.
- 17.3 You have a right of access to, collection of, and may request correction of any personal information held by us.

18 General

- 18.1 Unless expressly provided otherwise in any written agreement between us and you, these terms constitute the entire agreement between us and you relating to the supply of goods and services by us to you.
- 18.2 If any clause or part of a clause of the terms is held to be invalid or unenforceable for whatever reason that part shall be severed from these terms and the remaining provisions shall remain in full force and effect.
- 18.3 We can vary these terms at any time by notification to you. You cannot vary these terms other than with our express written consent.