



TERMS AND CONDITIONS

Definitions

- 1.1 "Contractor" shall mean Fusion Plumbing and Air and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Contractor and the Client subject to clause 3 of this contract.

Acceptance

- 2.1 Any instructions received by the Contractor from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Contractor.
- 2.3 None of the Contractor's agents or representatives are authorized to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorized statements.

Price and Payment

- 3.1 The Price shall be as indicated on invoices provided by the Contractor to the Client in respect of Goods/services supplied.
- 3.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of the Contractor between the date of the contract and delivery of the Products.
- 3.3 Unless otherwise agreed in writing payment for products and services shall be made in full upon completion.
- 3.4 Please note the Customer agrees that full payment is due on the due date for all products and services delivered to the purchaser by the Contractor.
- 3.5 Payment will be made by cash on delivery, or by check, or by credit card (subject to a



processing fee of the transaction value), or by any other method as agreed to between the Client and the Contractor.

Delivery of Goods / Services

4.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Client at the Contractor's address.

4.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Contractor for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.

4.3 The costs of carriage and any insurance which the Client reasonably directs the Contractor to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.

4.4 Where there is no agreement that the Contractor shall send the Goods to the Client, delivery to a carrier at limited carrier's risk at the expense of the Client is deemed to be delivery to the Client.

4.5 The Contractor may deliver the Goods by separate installments (in accordance with the agreed delivery schedule). Each separate installment shall be invoiced and paid for in accordance with the provisions in this contract of sale.

4.6 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

4.7 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;

- (a) such discrepancy in quantity shall not exceed 5%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.

4.8 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.

4.9 The Contractor shall not be liable for any loss or damage whatever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all.

Risk

5.1 If the Contractor retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

5.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Contractor is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these



terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

Client's Disclaimer

6.1 The Client hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Contractor and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgment.

Limitation of Liability

7.1 The company's liability shall be limited to:

7.2 The repair or making good of any defect pursuant to its undertaking in paragraph 8 below.

7.3 liabilities for personal injury or death resulting from negligence in the course of carrying out the companies duties.

7.4 the reasonable costs of repair or reinstatement of damage or any loss to the customers property, should this result from the negligence of the company or its employees, agents, franchisees or sub-contractors, and the customer incurs such costs.

7.5 The company will not hold any responsibility for any damage suffered to a part of any property where the damage is in whole or in part a consequence of a defect or weakness in that part of the property.

7.6 The company will not hold responsibility or liability for damage caused whilst investigating and repairing any plumbing, gas or drainage work, including blockages. This includes but not limited to; the removal of bathroom suites, panels or furniture, tiles and tiling, floor coverings (carpet, rugs, laminate, wood, tiles etc.), internal and external walls where pipe work is/has to be routed and other damages as a result.

7.7 If damage to plaster and brickwork is caused it will be the customer's responsibility to make good. We cannot accept responsibility for any damage to wallpaper, paintwork, tiles, carpet, furniture etc. Any silicone work does not carry any guarantee.

7.8 It is the responsibility of the customer to protect items of furniture, furnishings, fixtures and fittings. We will make reasonable efforts not to cause damage. It is suggested that the customer remove items that is considered to be a problem. If items remain within the working area, it is the responsibility of the customer to cover.

Defects/Returns

8.1 The Client shall inspect the Goods on delivery and shall within one (1) months of delivery notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are



defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8.2 For defective Goods, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods provided that:-

- (a) the Client has complied with the provisions of clause 8.1;
- (b) the Plumber will not be liable for Goods which have not been stored or used in a proper manner;
- (c) 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 reasonable possible in the circumstances.

Warranty

9.1 Subject to the conditions of warranty set out in Clause 9.2 the Contractor warrants that if any defect in any workmanship manufactured by the Contractor becomes apparent and is reported to the Contractor within three (3) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) repair the defect or remedy the workmanship.

9.2 The conditions applicable to the warranty given by Clause 9.1 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 Goods; or
- ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
- iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
- iv) The continued use of any Goods 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 the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.

(c) In respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.

9.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor



responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

Default & Consequences of Default

10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgment.

10.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Contractor from and against all the Contractor's costs and disbursements including on a solicitor and own client basis and in addition all of the Contractor's nominees costs of collection.

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

10.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

10.5 In the event that:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;

10.6 In the event that:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client, then without prejudice to the Contractor's other remedies at law:
 - (i) the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Contractor shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 10.1 hereof.



Title

11.1 It is the intention of the Contractor and agreed by the Client that property in the Goods shall not pass until:

- (a) The Client has paid all amounts owing for the particular Goods, and
- (b) The Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client, and that where practicable the Goods shall be kept separate until the Contractor shall have received payment and all other obligations of the Client are met.

11.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized and until then the Contractor's ownership of rights in respect of the Goods shall continue.

11.3 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Goods or any of them to the Contractor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- (b) The Contractor shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (c) If the Client fails to return the Goods to the Contractor then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods.
- (d) The Client is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Contractor.
- (e) The Client shall not deal with the money of the Contractor in any way which may be adverse to the Contractor.
- (f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor.
- (g) The Contractor may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Contractor arising out of these terms and conditions, and the Contractor may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Contractor can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- (i) Until such time that ownership in the Goods passes to the Client, if the Goods are so converted, the parties agree that the Contractor will be the owner of the end products.



Unpaid Contractor's Rights

12.1 Where the Client has left any item with Contractor for repair, modification, exchange or for the Contractor to perform any other Service in relation to the item and Contractor has not received or been tendered the whole of the Price, or the payment has been dishonored, the Contractor shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Contractor is in possession of them;
- (c) a right of resale,
- (d) the foregoing right of disposal, provided that the lien of the Contractor shall continue despite the commencement of proceedings or judgment for the Price having been obtained.

General

13.1 The Client will indemnify the Contractor and keep the Contractor indemnified against any liability, loss, claim or proceedings of any kind (whether arising under statute or common law) arising from services which are buried, or unseen being disturbed or damaged. The Contractor will not be liable for any repair work and any repair work required will be paid at the Clients expense.

Such liability, loss, claims or proceedings includes but is not limited to: -

- a) Damage to the property, real or personal;
- b) Death or personal injury; and
- c) Consequential or economic loss of any kind.