

1. Definitions

- 1.1 “Tauranga Plumbing” means Tauranga Hardware & Plumbing Ltd T/A Tauranga Plumbing, its successors and assigns or any person acting on behalf of and with the authority of Tauranga Hardware & Plumbing Ltd T/A Tauranga Plumbing.
- 1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Works” means all Works or Materials supplied by Tauranga Plumbing 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 Tauranga Plumbing 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 Tauranga Plumbing’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Tauranga Plumbing.
- 2.3 Where the Client is a tenant (and therefore not the owner of the land and premises where Materials are to be installed) then the Client warrants that the Client has obtained the full consent of the owner for Tauranga Plumbing to install the Materials on the owners land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Works provided under this agreement and to indemnify Tauranga Plumbing against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by Tauranga Plumbing except where such claim has arisen because of the negligence of Tauranga Plumbing when installing the Materials.
- 2.4 The Client agrees that they shall upon request from Tauranga Plumbing provide evidence that;
 - (a) they are the owner of the land and premises upon which the Works are to be undertaken; or
 - (b) where they are a tenant, that they have the consent of the owner for the Materials to be installed on the land and premises upon which the works are to be undertaken.

3. Call Out Fees

- 3.1 The Client accepts and acknowledges that a Call-Out Fee shall mean a minimum one (1) hours labour to be specified on Tauranga Plumbing’s quotation for Works provided. A Call-Out Fee after hours shall mean a minimum two (2) hours labour plus reasonable travel costs. After hours are weekends and/or public holidays, and after 5 pm and before 6 am Monday to Friday. As per clause 6.2 this will be treated as a variation and will be payable upon presentation of Tauranga Plumbing’s invoice.

4. Change in Control

- 4.1 The Client shall give Tauranga Plumbing not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Tauranga Plumbing as a result of the Client’s failure to comply with this clause.

5. Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to Tauranga Plumbing as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested services have been completed or the Client otherwise notifies Tauranga Plumbing in writing that said person is no longer the Client’s duly authorised representative).
- 5.2 In the event that the Client’s duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise Tauranga Plumbing in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to Tauranga Plumbing for all additional costs incurred by Tauranga Plumbing (including Tauranga Plumbing’s profit margin) in providing any Materials, Works or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

- 6.1 At Tauranga Plumbing’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Tauranga Plumbing to the Client in respect of Works performed or Materials supplied; or
 - (b) Tauranga Plumbing’s quoted Price (subject to clause 6.2) which shall be binding upon Tauranga Plumbing provided that the Client shall accept Tauranga Plumbing’s quotation in writing within thirty (30) days.
- 6.2 Tauranga Plumbing 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, limitations to accessing the site, obscured building defects, safety considerations, prerequisite

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- work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
- (d) in the event of increases to Tauranga Plumbing in the cost of labour or materials which are beyond Tauranga Plumbing's control.
- 6.3 At Tauranga Plumbing's sole discretion a deposit may be required.
- 6.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Tauranga Plumbing, which may be:
- (a) on completion of the Works; or
 - (b) on delivery of the Works; or
 - (c) by way of progress payments in accordance with Tauranga Plumbing's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (d) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Tauranga Plumbing.
- 6.5 Tauranga Plumbing may submit a detailed payment claim at intervals not less than monthly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of Materials delivered to the site but not yet installed. Progress payment shall be made within twenty (20) working days of each monthly payment claim.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Tauranga Plumbing.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Tauranga Plumbing an amount equal to any GST Tauranga Plumbing must pay for any supply by Tauranga Plumbing under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Delivery of the Works**
- 7.1 Subject to clause 7.2 it is Tauranga Plumbing's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Tauranga Plumbing claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Tauranga Plumbing'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 Tauranga Plumbing that the site is ready.
- 7.3 Tauranga Plumbing 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.
- 7.4 Any time or date given by Tauranga Plumbing to the Client is an estimate only. Tauranga Plumbing shall not be liable for any loss or damage whatsoever due to failure by Tauranga Plumbing to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Tauranga Plumbing.
- 8. Risk**
- 8.1 If Tauranga Plumbing retains ownership of the Materials under clause 14 then;
- (a) where Tauranga Plumbing 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 Tauranga Plumbing's address; or
 - (ii) the Materials are delivered by Tauranga Plumbing or Tauranga Plumbing's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Tauranga Plumbing is to both supply and install Materials then Tauranga Plumbing 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.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests Tauranga Plumbing to leave Materials outside Tauranga Plumbing's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Tauranga Plumbing is requested to merely clear such blockages, Tauranga Plumbing can offer no guarantee against reoccurrence or further damage. In the event of collapse during

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- the pipe clearing process, Tauranga Plumbing will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 8.4 Where Tauranga Plumbing 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 Tauranga Plumbing shall not be 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.
- 8.5 The Client acknowledges that Materials (including but not limited to paint, timber, granite, tiles & concrete) supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Tauranga Plumbing will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.6 Where the Client has supplied materials for Tauranga Plumbing to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Seller 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.
- 8.7 The Client acknowledges that Tauranga Plumbing is only responsible for Materials that are replaced by Tauranga Plumbing and that in the event that other Materials, subsequently fail, the Client agrees to indemnify Tauranga Plumbing against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.8 Where Tauranga Plumbing gives advice or recommendations to the Customer, or the Customer's agent, with specific instructions regarding the use of the Materials and such advice or recommendations are not acted upon then Tauranga Plumbing shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 8.9 Any advice, recommendation, information, assistance or service provided by Tauranga Plumbing in relation to Materials or Works supplied is given in good faith, is based on Tauranga Plumbing's own knowledge and experience and shall be accepted without liability on the part of Tauranga Plumbing and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
- 9. Access**
- 9.1 The Client shall ensure that Tauranga Plumbing has clear and free access to the work site at all times to enable them to undertake the Works. Tauranga Plumbing shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Tauranga Plumbing.
- 10. Underground Locations**
- 10.1 Prior to Tauranga Plumbing commencing any work the Client must advise Tauranga Plumbing 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.
- 10.2 Whilst Tauranga Plumbing will take all care to avoid damage to any underground services the Client agrees to indemnify Tauranga Plumbing 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 10.1.
- 11. Accuracy of Client's Plans and Measurements**
- 11.1 Tauranga Plumbing 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, Tauranga Plumbing accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 11.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Tauranga Plumbing places an order based on these measurements and quantities. Tauranga Plumbing accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 12. Insurance**
- 12.1 Tauranga Plumbing shall have public liability insurance of at least \$2m. It is the Client's responsibility to ensure that they are similarly insured.
- 13. Compliance with Laws**
- 13.1 The Client and Tauranga Plumbing shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

14. Title

- 14.1 Tauranga Plumbing and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Tauranga Plumbing all amounts owing to Tauranga Plumbing; and
 - (b) the Client has met all of its other obligations to Tauranga Plumbing.
- 14.2 Receipt by Tauranga Plumbing 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.
- 14.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Tauranga Plumbing on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Tauranga Plumbing and must pay to Tauranga Plumbing the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by Tauranga Plumbing shall be sufficient evidence of Tauranga Plumbing's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Tauranga Plumbing to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Tauranga Plumbing and must pay or deliver the proceeds to Tauranga Plumbing on demand.
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Tauranga Plumbing and must sell, dispose of or return the resulting product to Tauranga Plumbing as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Tauranga Plumbing to enter any premises where Tauranga Plumbing believes the Materials are kept and recover possession of the Materials.
 - (g) Tauranga Plumbing may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Tauranga Plumbing.
 - (i) Tauranga Plumbing may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 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 previously supplied by Tauranga Plumbing to the Client (if any) and all Materials that will be supplied in the future by Tauranga Plumbing to the Client.
- 15.2 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 Tauranga Plumbing may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Tauranga Plumbing 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 a financing change statement or a change demand without the prior written consent of Tauranga Plumbing; and
 - (d) immediately advise Tauranga Plumbing 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.
- 15.3 Tauranga Plumbing and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by Tauranga Plumbing, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by Tauranga Plumbing under clauses 15.1 to 15.5.

16. Security and Charge

- 16.1 In consideration of Tauranga Plumbing agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies Tauranga Plumbing from and against all Tauranga Plumbing's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Tauranga Plumbing's rights under this clause.
- 16.3 The Client irrevocably appoints Tauranga Plumbing and each director of Tauranga Plumbing as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

17. Client's Disclaimer

17.1 The Client hereby disclaims any right to rescind, or cancel any contract with Tauranga Plumbing or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Tauranga Plumbing and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

18. Defects In Materials

18.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Tauranga Plumbing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Tauranga Plumbing an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Tauranga Plumbing has agreed in writing that the Client is entitled to reject, Tauranga Plumbing's liability is limited to either (at Tauranga Plumbing's discretion) replacing the Materials or repairing the Materials.

18.2 Materials will not be accepted for return other than in accordance with 18.1 above.

19. Warranties

19.1 For Materials not manufactured by Tauranga Plumbing, the warranty shall be the current warranty provided by the manufacturer of the Materials. Tauranga Plumbing 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.

20. Consumer Guarantees Act 1993

20.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Tauranga Plumbing to the Client.

21. Intellectual Property

21.1 Where Tauranga Plumbing has designed, drawn, written plans, designed systems or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Tauranga Plumbing, and shall only be used by the Client at Tauranga Plumbing's discretion.

21.2 The Client warrants that all designs, specifications or instructions given to Tauranga Plumbing will not cause Tauranga Plumbing to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Tauranga Plumbing against any action taken by a third party against Tauranga Plumbing in respect of any such infringement.

21.3 The Client agrees that Tauranga Plumbing may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Tauranga Plumbing has created for the Client.

22. Default and Consequences of Default

22.1 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 Tauranga Plumbing's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

22.2 If the Client owes Tauranga Plumbing any money the Client shall indemnify Tauranga Plumbing from and against all costs and disbursements incurred by Tauranga Plumbing in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Tauranga Plumbing's collection agency costs, and bank dishonour fees).

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

22.4 Without prejudice to Tauranga Plumbing's other remedies at law Tauranga Plumbing shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Tauranga Plumbing shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Tauranga Plumbing becomes overdue, or in Tauranga Plumbing's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent or bankrupt, 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.

23. Cancellation

23.1 Tauranga Plumbing 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 Tauranga Plumbing shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to

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Tauranga Plumbing for Works already performed. Tauranga Plumbing shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 23.2 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 Tauranga Plumbing as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items that have been modified or specially sourced, will definitely not be accepted once production has commenced, or an order has been placed.

24. Dispute Resolution

- 24.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

25. Privacy Act 1993

- 25.1 The Client authorises Tauranga Plumbing or Tauranga Plumbing's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Tauranga Plumbing from the Client directly or obtained by Tauranga Plumbing from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 25.2 Where the Client is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 25.3 The Client shall have the right to request Tauranga Plumbing for a copy of the information about the Client retained by Tauranga Plumbing and the right to request Tauranga Plumbing to correct any incorrect information about the Client held by Tauranga Plumbing.

26. Construction Contracts Act 2002

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

27. General

- 27.1 The failure by Tauranga Plumbing to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Tauranga Plumbing'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 the remaining provisions shall not be affected, prejudiced or impaired.

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- 27.2 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.
- 27.3 Tauranga Plumbing 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 Tauranga Plumbing of these terms and conditions (alternatively Tauranga Plumbing's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.4 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 Tauranga Plumbing nor to withhold payment of any invoice because part of that invoice is in dispute.
- 27.5 Tauranga Plumbing may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 27.6 The Client agrees that Tauranga Plumbing may amend these terms and conditions at any time. If Tauranga Plumbing makes a change to these terms and conditions, then that change will take effect from the date on which Tauranga Plumbing notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Tauranga Plumbing to provide any Works to the Client.
- 27.7 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 event beyond the reasonable control of either party.
- 27.8 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, it is not insolvent and that this agreement creates binding and valid legal obligations on it.