

## TERMS & CONDITIONS OF TRADE

PGD Works Limited provides plumbing, drainage and gas fitting products and services to customers ("the Customer") on the following terms and conditions of trade:-

### 1 DEFINITIONS

- 1.1 "PGD Works" means PGD Works Limited (and includes any directors, employees and agents thereof).
- 1.2 "Customer" means the Customer, together with any person acting on behalf of and with the authority of the Customer, or any person purchasing Products and Services from PGD Works.
- 1.3 "Price" means the cost of the Products and/or Services invoiced by PGD Works to the Customer, including all incidental costs payable by PGD Works on the Customers behalf.
- 1.4 "Products and Services" means all advice, goods, materials, labour, products and services of any type and nature provided and supplied by PGD Works to any Customer including without limitation any costs directly related to the provision by PGD Works to the Customer of all such products and services.
- 1.5 "Estimate of Works" means price on offer for a fixed term subject to Clause 7 herein;
- 1.6 "PPSA" means the Personal Property Securities Act 1999.
- 1.7 "Terms" mean these Terms & Conditions of Trade as set out herein.
- 1.8 "Additional Costs" means the cost of any additional Products and Services supplied by PGD Works arising from any alteration or change made to specifications of Products and Services in addition to the agreed Products and Services.
- 1.9 "Invoice" means any invoice or such other document specifying and itemising the costs of the Products and Services supplied by PGD Works to the Customer and recording the total amount payable by the Customer to PGD Works.

### 2 AGREEMENT

- 2.1 In consideration of PGD Works supplying to the Customer Products and/or Services the Customer warrants, undertakes and agrees:
  - 2.1.1 That these Terms, together with any written or verbal agreement made between PGD Works and the Customer, form the contract between PGD Works and the Customer;
  - 2.1.2 That it is the Customer's responsibility to ensure that these Terms are promptly brought to the notice of any employee, staff member or representative of the Customer;
  - 2.1.3 That any Invoice(s) issued by PGD Works to the Customer are deemed to be incorporated into and form part of this Agreement; and
  - 2.1.4 That the Customer is authorised to commission PGD Works to supply any Products or Services.

### 3 ACCEPTANCE

- 3.1 Any instructions or directions received by PGD Works of either a written and/or verbal nature from

the Customer for the supply of any Products and Services shall constitute acceptance by the Customer of these terms and the basis therefore on which any Products or Services are to be supplied by PGD Works.

- 3.2 Should more than one Customer instruct or direct PGD Works in relation to the same supply of Products and Services, each Customer is jointly and severally liable for all amounts due and owing to PGD Works.

### 4 COLLECTION AND USE OF INFORMATION

- 4.1 For the purposes of the Privacy Act 1993, the Customer authorises or consents to:-
  - 4.1.1 the collection, retention and use of any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this agreement, or marketing any Products and/or Services provided by PGD Works to any other party; and
  - 4.1.2 the disclosure of any information obtained to any person for the purposes set out in clause 4.1.1.

### 5 PRICE

- 5.1 The Price shall be the amount shown on any Invoice(s) or other similar documents provided by PGD Works to the Customer in respect of any Products and/or Services supplied.
- 5.2 The time for payment of PGD's Products and/or Services shall be of the essence and will be stated on the Invoice.
- 5.3 PGD Works reserves the right to charge for any Additional Costs it considers reasonable in respect of any alteration or change made to specifications of Products and Services after any order has been placed, and to increase prices at any time to cover any increases (and without limitation) in the cost of labour, materials, government taxes, public holiday, exchange rates or delivery costs (where applicable).
- 5.4 Where not specified all amounts stated are exclusive of goods and services tax ("GST") and are payable plus GST.

### 6 TERMS OF PAYMENT/LATE PAYMENT/DEFAULT

- 6.1 The Customer shall pay in full and without deduction or setoff any invoice rendered by PGD Works within the time stated on the invoice, time being of the essence. PGD Works may require the Customer to pay a deposit at its discretion prior to commencing the supply of any Products and/or Services.
- 6.2 PGD Works reserves the right to charge interest on overdue unpaid Invoices at the rate of 2.5% per month or part month thereof on the balance outstanding from the due date until payment is received. The right to charge interest is without prejudice to PGD Work's other rights in respect of non or late payment.

**6.3** Without prejudice to any other remedies PGD Works may have, if at any time the Customer is in breach of any obligation (including but not limited to the obligation to promptly pay any Invoice), PGD Works may suspend or terminate the supply of any Products and/or Services to the Customer and any other obligations it may have to the Customer. PGD Works will not be liable to the Customer for any loss or damage the Customer may suffer where PGD Works exercises its right under this Clause.

**6.4** In the event that:

**6.4.1** any Invoice payable to PGD Works is overdue, or in the event that PGD Works reasonably considers that the Customer will not or is unlikely to be able to meet its obligations to pay an Invoice as it falls due; or

**6.4.2** should the Customer become insolvent, or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or

**6.4.3** a receiver, manager, liquidator or similar person is appointed in respect of the Customer;

PGD Works shall be entitled to cancel or withdraw in whole or in part its Products and/or Services to any Customer and without prejudice to any other remedies; and all amounts owing to PGD Works shall, whether or not due for payment, immediately become payable.

**6.5** PGD Works reserves the right to recover from the Customer all costs and/or expenses incurred in the enforcement of any rights contained in these Terms, including but not limited to solicitor's fees or debt collection agency fees.

## **7 ESTIMATE OF WORKS**

**7.1** In the event that the Customer requests an Estimate of Works from PGD Works for PGD Products and/or Services required, the Estimate of works shall be:-

**7.1.1** valid for thirty (30) days from the date of issue;

**7.1.2** exclusive of GST unless specifically stated otherwise;

**7.1.3** deemed to interpret the Customer's written and verbal instructions. The Customer must check Estimate of Works carefully and PGD Works will not accept any responsibility for any errors in the Customer's specifications or instructions once PGD Work's Estimate of Works is accepted by the Customer;

**7.2** PGD Works reserves the right to alter the Estimate of Works due to any circumstances beyond its control; and

**7.3** In the event additional Products and/or Services are required from PGD Works which affect the Estimate of Works then PGD Works is entitled to Invoice the Customer for any such Additional Cost(s) the Customer agrees to pay for the Additional Cost(s) of such Products and Services.

## **8 TITLE AND SECURITY (PPSA)**

**8.1** PGD Works retains full legal and equitable title and ownership in any Products and/or Services supplied by it to the Customer and legal title to the Products and/or Services shall not pass to the Customer and there shall be no right to deal with, onsell or encumber Products and/or Services until all Invoice(s) rendered by PGD Works to the Customer (including delayed or deferred payments on a credit basis) have been paid in full and without deduction or setoff by the Customer to PGD Works in cash or as otherwise specified by PGD Works.

**8.2** PGD Works reserves the right to enter onto the Customer's premises or upon any third parties' premises where Products and/or Services are located to take possession of Products and/or Services and PGD Works shall not be responsible nor liable in contract or in tort or in any manner whatsoever, unless by statute such liability cannot be excluded, for any damage caused or any loss that results from such action. The Customer hereby grants PGD Works and its agents an irrevocable licence to enter upon the applicable premises and to repossess Products and/or Services in the event of any default by the Customer under these Terms.

PGD Works may resell any repossessed Products and/or Services and credit the Customer's account with the net proceeds of sale (after deduction of all associated repossession costs including but not limited to storage, selling and other costs). PGD Works may also retain any repossessed Products and/or Services and credit the Customer's account with the invoice value thereof less such sum as PGD Works reasonably determines accounts for depreciation, obsolescence, loss or profit and costs.

**8.3** In the event the Credit Repossession Act 1997 becomes applicable to any transaction between the Customer and PGD Works, the Customer shall be subject to the rights provided in that Act notwithstanding any provision contained within these Terms.

## **9 SECURITY INTEREST FOR SERVICE PROVIDERS**

**9.1** The Contract constitutes a security interest in all of the Customer's present and after-acquired Services that PGD Works has performed services on or to or in which goods or materials supplied or financed by PGD Works have been attached or incorporated.

## **10 DISPUTE RESOLUTION**

**10.1** PGD Works will endeavour to resolve any dispute between the Customer and itself or else by mediation which is to be conducted by an independent mediator appointed by agreement between both parties.

**10.2** The Customer must make a claim relating to Products and/or Services within fourteen (14) days of delivery to be considered by PGD Works subject to clause 11 herein.

## **11 WARRANTY**

**11.1** PGD Works warrants that it will repair or make good any defects in the services provided under the Contract, if written notice of the claim is received by PGD Works within fourteen (14) days from the date the Services were provided. No claim shall be accepted under such warranty if any attempt to repair the defective service is made by any person not authorised by PGD Works, or if the defective Service have been modified or incorrectly stored, maintained or used.

**11.2** PGD Works provides no warranty in respect of any Products sourced by either PGD Works or the Customer, from another supplier, company or manufacturer. For the avoidance of doubt any warranty for any Product failure is to be sought by the Customer via the trade outlet through which the product was sourced. PGD Works will provide such details as necessary for the warranty to be sought in this manner by way of the first receipt of purchase.

## **12 LIABILITY**

**12.1** PGD works shall not be liable for any loss or damage of any kind whatsoever, arising directly or indirectly, from the supply of Products and/or Services to the Customer, including consequential loss whether suffered by the Customer or another person and whether in contract or tort (including negligence) or other legal principle.

**12.2** In respect of any Services provided by PGD Works requiring the use of a digger or other such machinery, the Customer shall take all necessary precautions including but not limited to making enquiry with Vector and **0508 B4U Work** (0508 248 967) to disclose to PGD Works or the operator of such digger or machinery the exact location and depth of all underground services. PGD Works shall not be liable for any loss or damage of any kind whatsoever to the underground services resulting from failure to disclose such details. The Customer shall indemnify PGD Works and the operator against all losses or fines resulting from any loss or damage of any kind whatsoever to such services that are not disclosed.

**12.3** The Customer shall indemnify PGD Works against all other claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the clause 12.1 whether caused or arising as a result of the negligence of PGD Works or otherwise, brought by any person in connection with any matter, act, omission, or error by PGD Works its agents or employees in connection with the Products and/or Services.

**12.4** PGD Works shall not be liable for any loss or damage of any kind whatsoever, arising from a Customer supplied product where such damage does not arise through the fault of PGD Work's workmanship.

**12.5** PGD Works acknowledges that there are certain warranties, conditions and implications that are imposed by statute under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other legislation which cannot by law (or which can only to a limited extent by law) be modified or contracted out of. PGD's liability shall, in respect of such warranties, conditions and implications, where it is permitted, be excluded, or if it is unable to be excluded be applicable to the minimum extent as required by the relevant statute.

**12.6** It is agreed between PGD Works and the Customer that should PGD Works be deemed liable to the Customer arising from the supply of Products and/or Services by it to the Customer, contrary to the disclaimer of liability contained within these Terms, that such liability is limited in its aggregate to \$2,000,000.00 being the amount of Liability Insurance carried by PGD Works.

### **13 CONSUMER GUARANTEES ACT**

**13.1** The Consumer Guarantees Act 1993 will not apply to Products and/or Services acquired or supplied to the Customer from PGD Works for the purposes of

business use pursuant to sections 2 and 43 of that Act.

### **14 CONSTRUCTIONS CONTRACTS ACT 2002**

**14.1** Where PGD Works supplies any Products and/or Services in any building or structure of fittings forming, or to form, part of land (including but not limited to any pipeline, aqueduct, water main, water supply, drainage) the installation is "construction work" as defined in section 6 of the Constructions Contracts Act 2002 ("CCA") and the provisions of the CCA will apply.

**14.2** Pursuant to section 13 of the CCA, the Customer is not entitled to withhold payment and/or progress payments (where applicable) and must pay PGD Works on the due date according to the Terms of this Agreement upon receipt of a Payment Claim pursuant to section 20 of the CCA.

### **15 GENERAL PROVISIONS**

**15.1** In the case of conflict between these Terms or any other document provided by PGD Works, these Terms shall prevail.

**15.2** Where PGD Works fails to enforce any Term or fails in any way to exercise its rights under these Terms, PGD Works shall not be deemed to have waived those rights with respect to any breach or subsequent breach of any Term.

**15.3** If any of the Terms are held to be invalid, illegal or unenforceable for whatever reason, the remaining Terms shall remain in full force and effect.

**15.4** PGD Works shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

**15.5** The Customer by engaging PGD Works to provide Products and/or Services does so on the basis that the Customer has read, understood and agrees to be bound by these Terms.