

Osborne Plumbing and Gas Limited T/A Laser Plumbing Grey Lynn Terms and Conditions of Trade

1. Definitions

- 1.1. "OPG" means Osborne Plumbing and Gas Limited trading as Laser Plumbing Grey Lynn its successors, assigns, employees, contractors or any person acting on behalf of and with the authority of "OPG" and includes the use of I, we, us and our.
- 1.2. "Customer" in these terms means the user of the Goods and Services and where the order has been placed with "OPG" by a broker, agent or a third party, includes that broker, agent or third party, personally or otherwise and if there is more than one, Customer is a reference to each Customer jointly and severally.
- 1.3. "Work" in these terms means carrying out Plumbing, Drainage, Roofing and Gas Fitting services for you, and the production or supply of any Goods by us as part of or related to such services, as described in any quotation or invoice.
- 1.4. "Charge Up" in these terms means the actual cost of the work performed by OPG requested by the Customer and also extra work to any quotation already provided.
- 1.5. "Goods" shall have the meaning given to it in the Personal Property Securities Act 1999.
- 1.6. "Inventory" shall have the meaning given to it in the Personal Property Securities Act 1999 and is described in these terms as "Goods".
- 1.7. "Working Day" shall have the meaning given to it in the Interpretation Act 1999. For OPG this is Monday to Friday 8:00 am to 4:30pm.
- 1.8. "Re-stocking Fee" means any amount charged by a wholesaler or retailer to "OPG" for accepting back sold merchandise.
- 1.9. "After Hours" means any hours that fall outside of the "Working Day" Monday to Friday 8:00 am to 4:30pm.
- 1.10. "Public Holiday" as outlined in the Holidays Act 2019.

2. Acceptance

- 2.1. These Terms of Trade apply to the supply of any Work to the Customer provided by OPG and apply to all future requests for work unless specified otherwise in writing.
- 2.2. On requesting or placing any order for Work from or with OPG the Customer shall be deemed to have read, understood and accepted these Terms of Trade.
- 2.3. OPG reserves the right to review and change these Terms of Trade at any time. If, following any such review there is to be any change to these Terms of Trade, then that change will take effect from the date that OPG notifies the customer of such change in writing and will prevail over any other terms to the extent of any inconsistency with any other document or agreement between the Customer and OPG.

3. Trading Issues

- 3.1. OPG reserves the right to decline in its sole discretion any order for the request of any Work or Services; in which case the Customer will be advised as soon as reasonably practicable. All estimated prices are subject to change without notice and at the sole discretion of OPG.

4. Quotations

- 4.1. All quotations are valid for **30 calendar days from the date of the quotation** and are provided in writing. **ALL work quoted in excess of \$1,000.00 (including GST) is subject to the Customer first paying to OPG a deposit of 50% of the quoted works price (including GST) and/or in the case of a company a personal guarantee from the shareholders and directors of that company in a form required by OPG before any work will be commenced.**
- 4.2. **OPG does not provide a breakdown of the quote provided and the customer is required to accept the quotation in writing before any work will be commenced.**
- 4.3. If **any extra/additional work is required or requested after the quote is accepted** and which is not described on the quotation, OPG will communicate with the Customer to advise that the **extra work will be invoiced on a Charge Up basis and will be set up as a variation to the quote contract which the client accepts and agrees to pay the extra cost of.**
- 4.4. Building, electrical and hardware work, unforeseen issues, or items of any kind that are not quoted for are extra work and be invoiced on a Charge Up basis (subject to clause 4.3).

5. Price

- 5.1. At OPG's sole discretion the price shall be and the Customer agrees to pay by accepting these terms and conditions the \$150.00+GST minimum service charge for the first 30 mins on site. This includes 30 mins of traveling to site in the Greater Auckland area, admin and vehicle costs. Hours thereafter charged in 15-minute increments \$25.00+GST, parts and materials.
 - (a) The amount set out on invoices provided by OPG to the Customer in respect of Goods supplied and Services performed or any cancellation; or
 - (b) OPG's quoted Price (subject to clause 4.1) which shall be binding upon OPG provided that the Customer shall accept OPG's quotation in writing within thirty (30) days.
- 5.2. OPG reserves the right to change and the Customer agrees to pay:
 - (a) if a variation to the Goods which are to be supplied is required or requested and which will be invoiced on a Charge Up basis; or
 - (b) if a variation to the Services originally scheduled is required or requested and which will be invoiced on a Charge Up basis; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from OPG's third party suppliers or if Client supplied Goods are not compliant in any way, then OPG reserves the right to provide alternate Goods; or

- (d) in the event of increases to OPG in the cost of labour or Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond OPG's control;
- (e) all prices are plus GST which are payable by you in New Zealand dollars.
- (f) disbursements incurred by us on your behalf may include a reasonable mark-up by us.
- (g) materials are charged at plumbing merchant's retail price, time taken to obtain materials is chargeable along with completing job notes for work undertaken whilst on site.
- (h) cancellation fees apply refer 8.3.
- (i) materials, rubbish removal, electrical work, building work or any unforeseen circumstances are at the owner's cost.
- (j) if your job falls outside of normal business hours (refer 1.7) then after-hours rates will apply. \$250.00+GST for the first hour and \$37.50+GST per 15mins thereafter plus materials.
- (k) if your job falls on a public holiday (refer 1.10) you will be charged \$490.00+GST for the first hour. \$40.00+GST per 15mins thereafter plus materials.
- (l) backflow tests per preventer \$180.00+GST inclusive of travel, vehicle and admin charges and includes test certificate.
- (m) specialist rates apply for drainage, CCTV inspections.
- (n) the Company reserves the right to refuse to install material supplied by the Customer that are not new, deemed quality of good workmanship or have not passed the NZ approval standards.

6. Terms of Payment

- 6.1. The Customer shall **PAY IN FULL** and without deduction or setoff for the Goods or Services **ON JOB COMPLETION**. Unless otherwise agreed in writing prior to the date of the invoice. Your payment is made only when funds have fully cleared through the banking system and show in the OPG's bank account.
- 6.2. when a deposit is required, being an advanced payment before work is commenced (refer 4.1) for quoted work this must show in bank account before work will be scheduled.
- 6.3. work that surpasses \$1,000.00+GST in value a part payment will be required, or a project payment will be sought for all charge up work and must be paid in order to continue with works.
- 6.4. payment can be made by cash on completion, direct debit, eftpos or credit card. Credit cards attract a fee of 3%.

7. Default

- 7.1. OPG reserves the right to charge interest on overdue accounts at the rate of 2.5% per month on the balance outstanding from the date payment was due until payment is received. The right to charge interest is in addition and without prejudice to OPG's other rights in respect of non or late payment.
- 7.2. OPG further reserves the right to recover from the Customer all costs and/or expenses incurred in the repossession of the Goods or instructing a solicitor or debt collection agency to recover any amount overdue for payment (including any amount owing on any order issued by the Disputes Tribunal or on any judgment unpaid) and such costs and expenses shall bear interest as provided for in 7.1 above until the date of payment.

8. Cancellation

- 8.1. All cancellations for the request of Work and Services must be in writing and delivered to OPG in writing by email no later than 24 hours prior to the commencement of the work.
- 8.2. OPG reserves the right to charge the customer a Re-stocking Fee.
- 8.3. If a request to **cancel goods and/or services is received when in transit to or on site, the Customer agrees to pay a cancellation fee of \$150.00+GST.**

9. Privacy Act 1993

- 9.1. The Customer and the Guarantors authorize OPG or it's agent to:
 - (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customers and/or the Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors and
 - (b) disclose information about the Customer and/or Guarantors, whether collected by OPG or it's agent from the Customer and/or Guarantors directly or obtained by "OPG" or it's agent from any other source, to any other credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection, or notifying a default by the Customer and/or Guarantors where any payment is more than 30 days overdue.
- 9.2. Where the Customer and/or Guarantors are individuals the authorities under clause 9.1 are authorities or consents for the purposes of the Privacy Act 1993.

10. Force Majeure

- 10.1. OPG shall not be liable for any delay or failure to perform any obligation in whole or in part under these Terms of Trade or any loss or damage (including indirect or consequential loss or damage) if such delay or failure is due to Force Majeure (as that term is commonly understood). Nothing in this clause 10 shall excuse payment of any amount owing as it becomes due under the Terms of Trade.

11. Limitation of Liability

- 11.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 11.2. OPG shall have no further liability or responsibility for any losses of profits, revenue, business opportunity, anticipated savings, wasted overheads and damage to goodwill, direct, indirect or consequential injury, loss or any damage whatsoever and howsoever arising.

12. Ownership and Property

- 12.1. Property and ownership in goods, whether in their original form or incorporated in, intermingled with or attached to another product, will not pass to you but will remain with us until we receive payment in full of the purchase price of the goods and all other amounts that you owe to us for any reason;
- 12.2. Until property passes to you, you should hold any goods and proceeds of any kind in trust in a fiduciary capacity for us as bailee, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices;
- 12.3. Unless otherwise notified in writing, where goods are sold to you as inventory or consignment stock or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods) you are authorized to sell the Goods in the ordinary course of your business, but you must hold any accounts receivable or other proceeds for our benefit. If you use any money proceeds to purchase replacement inventory, whether from us or a third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all sums owing to us are paid.
- 12.4. You must not resell or part with possession of any Goods that we supply for your use before you have paid for them in full, unless we have given you our written consent.
- 12.5. Where you have not paid for the goods and we reasonably believe that the goods have been or will be destroyed, damaged, disposed of, sold, endangered, disassembled, removed, or concealed or that you are or will be in breach of any part of clauses 6, 12 and 13 of these Terms of Trade, we or our agent may enter your premises without further notice to you or any other person, to remove any goods which are our property, including goods which are incorporated into any other goods and without prejudice to any of our other rights.

13. Personal Property Securities Act 1999 (“PPSA”)

- 13.1. By assenting to these terms and conditions in writing you acknowledge and agree that these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- 13.2. You grant us a security interest in the Goods that we supply to you. Our security interest covers the Goods together with proceeds of all kinds, to the value of all Goods that we have supplied to you whether or not those Goods have become accessions to other Goods or processed or intermingled into or mixed with other Goods. The Goods and Services subject to the security interest will be described on our invoices. Where Goods that we supply to you have become mixed with other similar Goods supplied by other persons, you grant us a security interest in the mixed Goods to the value of the goods in the mixture that we have supplied to you but which have not yet been paid for;
- 13.3. You agree to do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds of all kinds. You waive all rights to receive a copy of any verification statement or a financing statement.
- 13.4. You must advise us immediately in writing of any changes to information you have provided to us, and at least 15 business days before changing your name, your company name or your trading name.
- 13.5. You agree that you will supply us, within 2 business days of our written request, with copies of all security interests registered over your personal property, and you authorize us as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control;
- 13.6. You must reimburse us our reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you;
- 13.7. If we repossess Goods under this agreement, we may maintain those goods or dispose of them without notice to you or any other person, and, after deducting reasonable costs of sale we will credit any surplus against any sums owing to us. We shall not be obliged to furnish you with a statement of account or to pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obligated to reinstate or resupply any repossessed Goods to you;
- 13.8. You authorize us or our agent to search the Personal Property Securities Register at any time for information about you or (if you are a company) your parent and associated companies.

14. Delivery and Risk

- 14.1. The Customer is responsible for insurance and risk in the goods from the time they leave our premises;
- 14.2. The Customer agrees to pay all delivery costs. If we deliver any order in installments, then each delivery is a separate contract under the Terms of Trade;
- 14.3. All claims for shortage or delivery damage must be made in writing to the carrier and to us within 3 business days of the date of the delivery, or in the case of non-delivery within 2 business days of the due date for delivery;
- 14.4. We will make every effort to deliver goods, or perform services, in a timely manner but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance;

14.5. Delivery of the Goods shall be made by OPG or its agent by delivering the Goods to the Customers address specified in the Customers order at any time after OPG or its agent has notified the Customer that the Goods are ready for delivery.

15. Notices

15.1. All notices required or permitted under these Terms of Trade shall be in writing and shall be delivered personally to OPG or sent by certified email.

15.2. Any such notice shall be deemed given when so delivered personally to OPG or if sent by certified email on any working day before 03:00 pm, any notice received by email after 03:00 pm shall be deemed given on the next working day.

16. The Solvency Test

16.1. Where the customer is a limited liability company the directors agree that at all times the customer satisfies the solvency test set out in section 4 of the Companies Act 1993.

16.2. The directors agree to notify OPG immediately if there is doubt as to whether the company is solvent:

- (a) at the time of placing an order for Goods and Services;
- (b) if an invoice becomes overdue for payment as provided for in 6.1.

16.3. The Directors will provide OPG with a signed solvency certificate in the event that there is more than \$5,000.00 overdue to OPG and at the time where:

- (a) distributions by the company are made for the benefit of a shareholder, including a dividend and incurring a debt to or for a shareholders benefit;
- (b) shares are purchased in the company;
- (c) share redemption options are being exercised;
- (d) financial assistance to acquire shares is offered by the company;
- (e) an amalgamation; and
- (f) 20 days prior to a solvent liquidation.

17. Warranties

17.1. Where the Consumer Guarantees Act 1993 (“**the Consumer Act**”) applies to the supply of Goods and Services under these Terms of Trade, you may have additional rights under that act;

17.2. Where Goods are subject to manufacturers warranties, we will pass on the benefit of those warranties to you without being directly liable to you under any warranty. You are responsible for the cost of returning Goods to the manufacturer or to us under any warranty, and you may be responsible for additional costs including (but not limited to) freight. Where you require us to do anything related to a warranty claim, you must pay our service and call-out charges. We may refuse to assist with warranties if any sum that you owe us for any reason is overdue or remains unpaid.

18. Dispute Resolution

18.1. 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 (14) days after service of a notice of dispute (pursuant to clause 15), 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.

18.2. 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 email to the other party refer such dispute to the Disputes Tribunal to be determined in accordance with S10 of the Disputes Tribunal Act 1988 if the total amount sought in the proceedings does not exceed \$30,000.00 or any such amount prescribed in the Act.

18.3. If the Customer fails to send to OPG a notice of dispute (subject to 18.1) it is agreed between the parties that a dispute has arisen and “OPG” can immediately refer such dispute to the Disputes Tribunal (pursuant to 18.2).

19. General Terms

19.1. If OPG fails to enforce any terms or exercise any rights under these Terms of Trade at any time, “OPG” has not waived that right.

19.2. The Customer may not assign or subcontract any of their rights or obligations under these Terms of Trade.

19.3. If any provision in these Terms of Trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

19.4. These Terms of Trade are governed by the laws of New Zealand. Any dispute is subject to the jurisdiction of the New Zealand courts.

19.5. At any time OPG may assign or subcontract any of their rights, title, interest and obligations under these Terms of Trade.