

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 “Promains Ltd” shall mean Promains Ltd or any agents or employees thereof.
- 1.2 “Customer” or “you” shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Promains Ltd.
- 1.3 “Goods” shall mean all goods, chattels, or services, provided by Promains Ltd to the customer, and shall include without limitation the supply of all plastic pipe and fittings and materials and all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Promains Ltd to the customer.
- 1.4 “Price” shall mean the cost of the goods as agreed between Promains Ltd and the customer subject to clause 4 of this contract.

2. QUOTATION

- 2.1 Where a quotation is given by Promains Ltd it:
 - 2.2 Is valid for 30 days from the date of issue; and
 - 2.3 Shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
 - 2.4 Is based on the rates and costs as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and charges shall be increased or decreased by the amount of any increase or decrease in any such items or any other factors affecting the cost of production and/or delivery and/or installation due to circumstances beyond our control after date of quotation;
- 2.5 Is upon the basis that reasonable access to the property or premises is available where it includes the cost of delivery to the property or premises. If such access is not available an extra charge for handling will be added;
- 2.6 Unless we have measured the structure at your request for the purpose of this quotation the sizes in the quotation are based upon the specification supplied by you and addition costs arising from any inaccuracy of such specifications shall be payable by you.
- 2.7 Where goods are required in addition to the quotation the customer agrees to pay for the additional such goods.

3. ACCEPTANCE

- 3.1 Any instructions received by Promains Ltd from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.
- 3.2 These terms and conditions constitute the entire agreement between Promains Ltd and the customer and prevail over other communications between Promains Ltd and the customer by the oral or written, previous or contemporaneous unless otherwise expressly agreed in writing and signed by or on behalf of Promains Ltd (‘this contract’).

4. COLLECTION AND USE OF INFORMATION

- 4.1 The customer authorizes Promains Ltd to collect, retain and use of any information about the customer, or for the purpose of assessing the customer’s credit worthiness, enforcing any rights under this contract, or marketing any good and services provided by Promains Ltd to any other party.
- 4.2 The customer authorises Promains Ltd to disclose any information to any person for the purposes set out in 4.1

4.3 Where the customer is a natural person the authorities under clause 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.

5. PRICE

- 5.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Promains Ltd at the time of the contract.
- 5.2 The price may be increased by the amount of any reasonable increase in the cost of the supply of the goods that is beyond the control of Promains Ltd between the date of the contract and delivery of the goods.

6. PAYMENT

- 6.1 Payment for goods shall be made in full on or before the 20th day of the month following the date of the invoice, or on receipt of delivery of good, whichever is the earlier (“the due date”).
- 6.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 6.3 Any expenses, disbursements and legal costs incurred by Promains Ltd in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor’s fees or debt collection agency fees.
- 6.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until the instrument is paid in full.

7. CONSTRUCTION CONTRACTS ACT 2002

- 7.1 Each invoice tendered by Promains Ltd to the customer is a payment claim (“Payment Claim) issued under the Construction Contracts Act 2002 (“CCA”).
- 7.2 Promains Ltd reserves its right to take legal action against the customer for failure to pay the Payment Claim in full under the CAA.

8. DEFAULT

- 8.1 The customer is in default, in the event that:
- 8.2 Any money payable to Promains Ltd becomes overdue, or in Promains Ltd opinion the customer will be unable to meet its payments as they fall due: or
- 8.3 The customer 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 creditors, or has judgement entered against it or the guarantor(s); or
- 8.4 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer; then without prejudice to Promains Ltd other remedies at law;
- 8.5 Promains Ltd shall be entitled to cancel all or any part of any other of the customer which remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to Promains Ltd shall, whether or not due for payment, immediately become payable.
- 8.6 Promains Ltd may in its discretion allocate any payment received from the customer towards any invoice that Promains Ltd determines and may do so at the time of receipt or at any time afterwards and on default of the customer may reallocate any payment previously received and allocated

9. CUSTOMERS OBLIGATION PRIOR TO INSOLVENCY OR INABILITY TO PAY IN FULL

- 9.1 The Customer agrees to notify Promains Ltd immediately on any and or financial issues or events including but not limited to being served with a statutory demand, notice of claim, statement of claim or default notice or demand letter or any other legal document or proceeding that may affect the customer's ability to make payments for the goods or work in progress or work performed by Promains Ltd ("Notification").
- 9.2 On Notification, Promains Ltd may then exercise its rights under clause 8.4 and 8.5.
- 9.3 The customer and its' directors and/or guarantor(s) acknowledge that they will be (personally) liable to Promains Ltd for any unpaid amount owing if the customer is in default under clause 8 and tails to fulfil its obligations under clause 9.1 to Promains Ltd

10. RISK

- 10.1 The goods remain at Promains Ltd's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customers risk whether delivery has been made or not
- 10.2 Delivery of goods shall be deemed complete when Promains Ltd gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer
- 10.3 The time agreed for the delivery shall not be an essential term of this contract unless the customer gives written notice to Promains Ltd making the time essential.
- 10.4 Where Promains Ltd delivers goods to the customer by instalments and Promains Ltd fails to deliver one or more instalments the customers shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach
- 10.5 Where we delivery goods to your premises or the place directed by you for the purpose of erection or installation all loses arising from destruction or theft or damage from whatever cause including weather, fire, water, earthquake and accident and whether they are wholly or partly installed or left on the site shall be borne by you

11. AGENCY

- 11.1 The customer authorises Promains Ltd to contact either as principal or agent for the provision of goods that are the matter of this contract.
- 11.2 Where Promains Ltd enters into a contract of the type referred to in clause 11.1 it shall be read with and form part of this contract and the customer agrees to pay any amounts due under the contract.

12. TITLE

- 12.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Promains Ltd.
- 12.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Promains Ltd and:
- 12.3 The goods shall be held by the customer as bailee; and
- 12.4 If the goods are attached, fixed or incorporated into any property of the customer, by way of manufacturing or assembly process by the customer or any third party, title in the goods shall remain with Promains Ltd until the customer has made payment on all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be deemed to be assigned to Promains Ltd as security for the satisfaction by the customer of the full amount owing to Promains Ltd and the customer.

12.5 The customer gives irrevocable authority to Promains Ltd to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Promains Ltd shall not be liable for costs, damages, or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

13. RETURN OF GOODS

- 13.1 The customer shall be deemed to have accepted the goods unless the customer notifies Promains Ltd otherwise within seven days of delivery of the goods to the customer. The customer must first obtain the written consent of Promains Ltd before return of any goods is accepted and Promains Ltd reserves the right to decline any request for return by the customer.
- 13.2 If the goods are not accepted according to clause 13.1 of this contract the customer shall pay for the delivery of the returned goods to Promains Ltd whereby the customer shall be entitled to a credit for the purchase price of any such goods provided that they are in the same clean, original and unused condition as they were at the time of sale and suitable in all respect for resale and the customer shall be liable to incur a 20% restocking fee.
- 13.3 No custom made goods or non-stock items shall be returned by the customer.

14. LIABILITY

- 14.1 Except as otherwise provided by statute Promains Ltd shall not be liable for:
- 14.2 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Promains Ltd to the customer and without limiting the generality of the foregoing of this clause Promains Ltd shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
- 14.3 Except as provided in this contract Promains Ltd shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Promains Ltd to the customer; and
- 14.4 In the case of "labour only" work where goods are supplied by the customer, Promains Ltd shall not be liable for any damage, loss or injury of any kind whatsoever however suffered or incurred whether such loss, damage or injury arises directly or indirectly from services or advice provided by Promains Ltd and without limiting the generality of the foregoing of this clause Promains Ltd shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss and provided for in the contract Promains Ltd shall not be liable in contract or in tort or otherwise for any loss, damage, or injury beyond the value of the services provided by Promains Ltd to the customer. In such circumstances, Promains Ltd may, at its absolute discretion elect to re perform the services but is not responsible in any way nor will it accept liability for the costs of or replacement of the materials supplied by the customer.
- 14.5 The customer shall indemnify Promains Ltd against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Promains Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Promains Ltd its agents or employee in connection with the goods.
- 14.6 It is the obligation of the Customer to ensure that at all times all ground and/or site conditions within which Promains is required to operate shall be such as to ensure that Promains can fully and effectually discharge its contractual obligations to the Customer and Promains shall not be liable for faults or defects in any work performed by it as a consequence of a failure by the Customer to meet its obligations under this subclause.

15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 (“CGA”) are excluded where the customer acquires goods or services from Promains Ltd for the purpose of a business in terms of Section 2 and 43 of the CGA.
- 15.2 The Customer shall indemnify Promains Ltd against all claims of any kind whatsoever however caused or arising as a result of any alteration to or modification of the pipes and fittings or installation carried out by or a the request or direction of the customer and in respect of which Promains Ltd has not given its prior written approval.

16 WARRANTY

- 16.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the CGA or except where expressly stated in this contract.

17. CANCELLATION

- 17.1 Promains Ltd shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the consumer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined under sections 17 to 28 of the Insolvency Act 2006 or is in default, see clause 8.
- 17.2 Any cancellation or suspension under clause 17.1 of this agreement shall not affect Promains Ltd’s claims for money due at the time of cancellation or suspension or for damages for any breach of terms of this contract or this contract or the customer’s obligation to Promains Ltd under this contract.

18. MISCELLANEOUS

- 18.1 The customer shall not assign all or any of its rights or obligations under the contract without the written consent of Promains Ltd.
- 18.2 Promains Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.3 Failure by Promains Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be waiver of any of the rights or obligations Promains Ltd has under this contract.
- 18.4 The law of New Zealand shall apply to this contract except to the extent expressly negative or varied by this contract.
- 18.5 Where terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 18.6 If the customer is a company or trust, the director(s) or trustee(s) signing this contract jointly and severally guarantee to Promains Ltd the payment of the balance of the customers credit facility from time to time, and the payment of any and all other monies now or hereafter owed by the customer to Promains Ltd. Any personal guarantee made by the party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 18.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.8 The Customer expressly acknowledges that any contract or agreement entered into between it and Promains, or any agreement incorporating any part of any contract of tender document of Promains (including but no limited to any Schedule of Prices and Daywork Rates) shall be deemed to have incorporated these terms and conditions of the Trade as if they were fully set out in such contract or agreement.

19. DISPUTES

19.1 If any dispute arises between Promains Ltd and the customer as to the interpretation or operation of any provision of, or the rights or obligations of either party under, the terms and conditions, the parties shall use their best endeavours in a spirit of good faith to resolve such dispute, but, if such resolution is not achieved within a reasonable period, Promains Ltd reserves the right to refer the matter in dispute to mediation/arbitration. The mediator or arbitrator is to be appointed by the parties on agreement, or if they are unable to agree on that appointment, to be selected and appointed by Promains Ltd. Costs of the mediation/arbitration shall be shared equally by Promains Ltd and the customer.

20. FORCE MAJEURE

21.1 Promains Ltd shall not be liable for failure or delay to perform any term of this contract, occasioned directly or indirectly, by any act of god, force of nature, natural or man-made event, labour restrictions or other causes whatsoever (whether similar or not to the foregoing) beyond Promains Ltd reasonable control.