

# Terms of Trade

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The following terms and conditions apply where Central Heating New Zealand Limited (CHNZ, we, us) supplies goods or services to a person, firm or company (the Client, you).

## 1 Terms of contract

By requesting us (Central Heating New Zealand Limited) to supply Goods or Services to you, by written contract or otherwise, you acknowledge and agree (or you are deemed to acknowledge and agree) that:

- (a) you have assented or agreed to these Terms forming part of each Contract notwithstanding anything that may be stated to the contrary in your enquiries or your order;
- (b) except as expressly agreed between you and us in writing:
  - (i) any other document entered into between you and us must be interpreted consistently with these Terms; and
  - (ii) to the extent that there is any inconsistency between these Terms and any other document, these Terms shall prevail.

## 2 Price

- 2.1 The price for Goods and Services will be as recorded in the Proposal provided to you whether in writing or otherwise.
- 2.2 We may withdraw any quotation before it is accepted, and in any event any quotation will lapse, without notice, 30 days after it is given, unless a deposit has been paid.
- 2.3 Upon payment of a deposit for a quote which has not been withdrawn, the price given in any such quote shall be held for six months from the date of the quote, at which time it will lapse without notice.
- 2.4 Unless agreed otherwise, GST will be payable by you as an additional amount on all prices and charges.
- 2.5 This entire clause 2 is subject to any variations in accordance with clause 3.

## 3 Variations

- 3.1 Any alteration to a Proposal will be a variation. A variation requested by you must be agreed by us in writing.
- 3.2 A variation includes, without limitation, changes to equipment positions once they have been installed, any necessary alteration to any aspect of a Proposal due to inaccurate information supplied by you (such necessity to be determined in our sole discretion) and delays which are out of our control.
- 3.3 We reserve the right to revise at any time of the quantity or type of goods or services supplied to you if we believe that other goods or services supplied by us will fulfil the same function. We will advise you of such variations, and for variations that we deem to be significant (in our sole discretion), your consent to the variation will be required (noting that such consent may not be unreasonably withheld by you). We may provide to you a refund for any amounts paid if the variations are of lesser value than provided to you in the Proposal, and we may issue an additional invoice to you if the variations result in further costs than provided to you in the Proposal.
- 3.4 In the event we are unable to commence or continue Work at a date and time agreed between you and us due to the state

of the premises (e.g. due to non-completion of foundation work), this will be a delay constituting a variation and we may, at our sole discretion, invoice you for any labour, time and other incidental costs arising from the variation.

- 3.5 A material fluctuation in our costs shall be a variation subject to expiry of the period specified in clause 2.3 above.
- 3.6 You will be liable to pay the original contract price and all additional costs incurred as a result of a variation, including the alteration of plans themselves and any losses incurred by us as a result of a variation. The price of any variation will not necessarily be charged on the same basis as any work already ordered, and such pricing is at our discretion [but based on our usual rates and charges].

## 4 Invoicing and Payment

- 4.1 We may render one or more Invoices for Work completed and Goods are delivered to the site or work pursuant to a Work Order is executed, as progress payments.
- 4.2 Invoices are due in full without the deduction or withholding of retentions within 7 days of receipt, unless prior written arrangement has been made with us. A final invoice shall be issued for any balance owing at completion. Clients with agreed credit accounts with us must pay in full by the 20th of the month following invoice.
- 4.3 Any deposit required by us is due by the date specified by us, or, if no date is provided, on acceptance of these Terms. Any such deposit is non-refundable.
- 4.4 If full payment of any invoice is not made on the due date then without prejudice to any other remedies available to us:
  - (a) we may cancel or withhold supply of further Goods or Services;
  - (b) interest on monies overdue shall be charged on a daily basis and be calculated by adding 5% per annum to the overdraft rate payable by us to our bankers at the time of and during such default, and interest shall continue to accrue both before and after judgement; and
  - (c) you shall indemnify Us for all costs and disbursements, including on a solicitor and own client basis, incurred by Us in recovering such monies owing.
- 4.5 If:
  - (a) you are in breach of any of these Terms; or
  - (b) you become insolvent, bankrupt, convene a meeting with your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed with respect to you or any of your assets,

all payments due under any Contract shall become immediately due and payable to us and we may without prejudice to any other remedies available to us, immediately terminate any Contract

- 4.6 We may from time to time vary your credit limit with us at our sole discretion in relation to further purchases of Goods or Services. If any acquisition would be in excess of your credit limit, we reserve the right to require, prior to delivery of the Goods or provision of the Services, payment in cash of the amount by which the cost exceeds your credit limit.

## 5 Ownership

Ownership in the Goods shall not pass unless full payment of all monies owing to us has been made in full. Until all monies have been paid, the following shall apply:

- (a) You hold the Goods supplied as fiduciary for us and will deal with them as agent for and on behalf of us (but will not hold yourself out as our agent to any third parties).
- (b) If any of the Goods are installed in or affixed to and become an accession to other Goods, the Security Interest continues in the accession in accordance with the PPSA. If the Goods become affixed to land then, provided that the Goods can be separated from the land to which they are affixed, they remain our property and we may uplift and retake possession of the Goods if you fail to meet your obligations under these Terms.
- (c) If the Goods subsequently become part of some other product or mass:
  - (i) nothing in these Terms shall be construed as limiting the application of Sections 82 to 86 (inclusive) of the PPSA; and
  - (ii) we authorise you to sell the Goods as part of the mass provided that the proceeds of such sale are held in a separate account on trust for us, with our beneficial interest extending to the amount of all monies still owing by you to us, and such interest shall remain until all such monies have been paid. This authority may be revoked by us for any reason upon us giving you notice in writing.
- (d) In the event that you are in default of your obligations under these Terms you irrevocably give us and our agents the right to enter your property, or any property that you have rights of access to, at any time without notice, to uplift and remove any of the Goods supplied and resell them. At any time we may enter the property and retrieve any equipment and tools located at the property that are owned or leased by us. We shall not be liable for costs, damages or expenses or any other loss suffered by you or any third party as a result of such actions and you agree to indemnify us (and our agents) against any costs (including legal costs) or liability we suffer as a result of such actions.
- (e) In the event that the Goods are resold by us pursuant to clause 5(d), you will remain liable for any shortfall between the proceeds of such sale and any monies owed by you to us.

## 6 Timing and Risk

- 6.1 While we will endeavour to meet any timeframes specified in any Proposal or any other agreement with regards to timing, time shall in no case be of the essence with respect to the performance of any Work. Any such timeframes are agreed in good faith and are not to be treated as a condition of any Proposal and subsequent payment. We shall not be responsible for any delay and, to the maximum extent permitted by law, will not be liable for any loss incurred by you as a result of such delay. You shall not be entitled to cancel this Contract for any delay.
- 6.2 Risk in respect of the Goods sold shall pass to you upon delivery, or at the time you pay for the Goods, whichever is the earlier, irrespective of whether ownership passes at this time or not. It is your responsibility to insure the Goods.

- 6.3 We will not be liable for, and will not pay compensation to you for, any damage or loss that occurs once risk in the Goods has passed to you.

## 7 Access and Compliance with Acts and Regulations

- 7.1 Where you grant access to us over your property for the purposes of carrying out any Work, you shall ensure:
- (a) convenient access for the delivery and provision of the Goods and Services. If access is not convenient we may make a further charge to you that we consider reasonable in the circumstances to cover the additional costs that arise due to such inconvenience;
  - (b) compliance with all legislation and regulations in relation to the property, including ensuring the property is in a safe state for us to undertake any necessary work.
- 7.2 If we have any concerns regarding the safety of our employees, in relation to the access and use of your property, we shall be entitled to halt all work on your property, until such time as our safety concerns have been resolved. In that case you shall be responsible for payment of work undertaken by us to that point and we shall not be liable to you on any basis arising from us having halted work.
- 7.3 We are not responsible for, and you agree to assume all liability and indemnify us for any residual damage to any property which arises from instructions issued by you requiring the alteration of work already done in accordance with any Proposal.
- 7.4 You are responsible for defining all relevant property boundaries and for obtaining and providing us with a copy of any consents or permits required in relation to any Work, prior to us commencing such Work. We will not be liable in any way for your failure to obtain, or your misunderstanding of, any consents or permits required in respect of the Works.
- 7.5 Upon commencement of any Work you shall ensure, at no cost to us, adequate safe storage facilities are provided for protection against theft and damage of the Goods or any equipment or other items belonging to us.

## 8 PPSA

- 8.1 Without limiting anything else in these Terms, you acknowledge that:
- (a) these Terms create in favour of us, a Security Interest in all present and after acquired Goods supplied by us to you (or for your account) to secure the payment by you to us of the amount owing; and
  - (b) these Terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order or in any enquiry by you; and
  - (c) the Security Interest shall continue until we give you a final release.
- 8.2 You undertake to:
- (a) promptly do all things, sign any further documents and/or provide any information which we may require to enable us to perfect and maintain the perfection of our Security Interest (including by registration of a financing statement); and
  - (b) give us not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).
- 8.3 Under the PPSA you are entitled to receive certain information in relation to financing statements registered against you as a debtor and certain attempts to deal with the

collateral of any security agreement. In relation to such rights, you agree:

- (a)(a) to waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement relating to the Security Interest;
- (b) that nothing in sections 114(1)(a) and 133 of the PPSA shall apply to these Terms;
- (c) to waive your rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.

In addition, you agree that the Security Interest has the same priority in relation to all amounts forming part of the amount owing, including future advances.

## 9 Warranties

- 9.1 Where the manufacturer of the Goods has provided a manufacturer's warranty (Manufacturer's Warranty), this Manufacturer's Warranty shall be extended to you. In order to be entitled to the Manufacturer's Warranty, you must have used the Goods in accordance with the terms of the Manufacturer's Warranty and notified us of the claim within the warranty period applying to the Manufacturer's Warranty.
- 9.2 In performing any Services, we warrant that we will:
  - (a) use reasonable care, skill and diligence;
  - (b) use reasonable endeavours to perform the Services in a timely manner and in accordance with any timeframe agreed in writing with you;
  - (c) comply with all applicable laws; and
  - (d) comply with your reasonable instructions.
- 9.3 All warranties and representations not expressly stated in this Agreement or otherwise given by us to you in writing, including the CHNZ Warranty (whether express, statutory, implied or otherwise) are excluded to the maximum extent permitted by law.
- 9.4 Except to the extent of a Manufacturer's Warranty, and any other written warranties given by us to you as required by law (whether express, statutory, implied or otherwise), all warranties in respect of Goods sold or services supplied are excluded to the extent permitted by law.
- 9.5 Where you acquire Goods from us for business purposes, you acknowledge and agree that those Goods or Services (as applicable) are being supplied and acquired "in trade" and therefore the Consumer Guarantees Act 1993 does not apply.
- 9.6 You agree that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to this Agreement. You further agree that you have not relied on any representations made by us in entering into this Agreement, and that accordingly this clause 9.5 is fair and reasonable.

## 10 Damage and Defects

You shall, within 7 days of Completion (time being of the essence), inspect the Work and notify us if you believe there to be any defect, damage or failure to comply with the Proposal or any agreed variation. You shall then give us a reasonable period of time for inspection of any issue identified. If you fail to comply with any of the requirements in this clause 10, the Work shall be deemed to be free of any damage or defects.

## 11 Liability

- 11.1 We shall not be liable:
  - (a) where your instructions were contrary to our advice and where the Goods and Services match your

instructions but are not fit and suitable for the purpose for which you require them;

- (b) where you have altered or modified the Goods, mis-applied the Goods, not followed our instructions in respect to the Goods or have subjected them to any unusual or non-recommended use, servicing or handling;
  - (c) for defects in any designs prepared by any third party;
  - (d) for claims arising wholly or partly by any factors beyond our control, including, without limitation, any loss resulting from a delay in production or supply of the Goods or services. Such factors include, but are not limited to, acts of nature, war, riot, power failure, industrial action, and defaults of any ancillary parties that we rely on in relation to the Goods and Services;
  - (e) for any indirect or consequential loss of any kind;
  - (f) for any goods supplied by you and which we use in relation to the Services ; or
  - (g) where the terms of any written warranty have not been complied with, or any manufacturer's handbook provided to you has not been complied with.
- 11.2 Our total liability under any warranty for defective Services or defective or damaged Goods is limited at our option to either:
    - (a) remedying the defective Services;
    - (b) replacing or repairing the defective or damaged Goods; or
    - (c) refunding the price of the defective Services or defective or damaged Goods.

Where we elect to repair or remedy as provided above, we will use reasonable endeavours to do so as soon as practical, but will not be liable for any delay in completing the repairs.

- 11.3 Subject to the other provisions under this clause 11 our total liability to you arising out of any claim for loss or damages, however arising, shall not exceed the value of the Goods or Services which are the subject of the claim.
- 11.4 You agree to indemnify us against all claims and loss of any kind whatsoever, however caused, and whether arising as a result of your negligence or otherwise, brought by any person in connection with any matter, act, omission or error by you or your agents or employees.

## 12 Guarantee

As part of this contract, we may require that you arrange for a guarantor to give a personal guarantee. Should we so require, we will not commence any Work until the guarantor has signed the guarantee in the form provided by us and any costs of executing such guarantee shall be borne by you.

## 13 Cancellation by you

You may not cancel any order for Goods or Services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid, and may charge you for any reasonable costs incurred by CHNZ prior to your cancellation.

## 14 Waiver

Waiver of any of these Terms by us will only be effective if given in writing by an authorised person. If we waive any of these Terms the waiver shall apply to and operate only in the particular transaction, dealing or matter in respect of which it was given, and will not affect our rights under these Terms at any future time.

## 15 Severability

Each clause in these Terms is severable and if any clause

is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

## 16 Consumer Guarantees Act 1993 (CGA)

16.1 Where you are acquiring Goods and/or Services in trade the CGA shall not apply.

## 17 Construction Contracts Act 2002 (CCA)

17.1 To the extent that the Goods and/or services purchased under these Terms create a construction contract for the purposes of the CCA, then the CCA and this clause 17 apply.

17.2 Without limiting any other rights that we are entitled to, you acknowledge and agree that we:

- (a) are entitled to progress payments in accordance with sections 16 and 17 of the CCA and you will make payment on the due date for payment as defined in section 18 of the CCA;
- (b) retain the right to claim for payment under the CCA by submitting a payment claim as defined in the CCA. You must serve any payment schedule on us within 7 days of the date of the relevant payment claim; and
- (c) retain the right to suspend work under section 72 of the CCA.

## 18 Fair Trading Act 1986 (FTA)

18.1 To the extent that the Goods and/or services purchased under these Terms are provided to you, as a consumer, or as a small trade contract, the Fair Trading Act will apply.

## 19 Privacy Policy

19.1 We recognise the importance of protecting your personal information and privacy. We will comply with our obligations under the Privacy Act 2020 when handling your personal information. Our processes in respect of handling your personal information can be found in our Privacy Policy which is listed on our website.

19.2 You may ask to see any of your personal information that we hold and ask for any details that are wrong to be corrected.

19.3 You authorise us to collect, retain and use information provided by it for the purpose of carrying out credit checks, deciding whether to continue to provide goods to the Client, debt collection or marketing. You further authorise us to obtain credit reports and other information about you from any third party for this purpose.

19.4 You may decide whether to provide any information requested however if requested information is not provided, you acknowledges that we may not be able to provide the goods or services to you.

19.5 You authorise us to provide information about you (including information relating to any default in payment obligations) to any third party for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law those third parties may hold that information in their systems and use it now and in the future.

## 20 Governing Law

20.1 These Terms are governed by New Zealand law.

## 21 Updates

21.1 These Terms may be updated by us from time to time, and such updated terms will apply to all Proposals (including variations) placed after such updated terms are published on our website. Current terms may be obtained from us on request by you. We will contact you in writing with any updates to the Terms that we consider to be fundamental to the nature of our engagement, however you acknowledge that it is your responsibility to ensure that you are aware of the Terms that apply when engaging with us.

## 22 General

22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.

22.2 We may licence and/or assign all or any part of our rights and/or obligations under this Contract without your consent.

22.3 You cannot licence or assign without our written approval.

22.4 Neither party shall be liable for any default (except in relation to payment of any monies due and owing) under this Contract due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.

22.5 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

## 23 Definitions

"**CHNZ Warranty**" means the warranty on the terms and conditions set out in the warranty document provided by us to you with respect to the goods and/or services (if applicable).

"**Completion**" means when all services pursuant to a Work Order have been completed.

"**Contract**" means the contract between you and Us for the provision of the Goods and/or Services of which these Terms and the Proposal form part.

"**GST**" means goods and services tax pursuant to the GST Act as amended or replaced).

"**GST Act**" means the Goods and Services Tax Act 1985 (as amended or replaced).

"**Goods**" means all goods supplied by us to you from time to time, and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

"**PPSA**" means the Personal Property Securities Act 1999 (as amended or replaced).

"**Proposal**" means any document recording your instructions for the supply of Goods and/or the delivery of Services pursuant to which we commence any work and includes any final quote for such instructions, however given.

"**Security Interest**" means the security interest provided for by these Terms.

"**Services**" means all services provided by us to you from time to time, including the delivery and installation of the Goods and all services incidental to such delivery and installation.

"**Terms**" means these terms and conditions.

"**Us or We**" means Central Heating New Zealand Limited.

"**Work**" means all work directly or indirectly related to a Proposal.