



Better Plumbing Limited Terms of Trade

1. Definitions

- 1.1** “BPL” means Better Plumbing Limited, its successors and assigns or any person acting on behalf of and with the authority of Better Plumbing Limited.
- 1.2** “Customer” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3** “Works” means all Works or Materials supplied by BPL to the Customer at the Customer’s request.
- 1.4** “Price” means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between BPL and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1** The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2** These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and BPL.
- 2.3** In the event that the Materials and/or Works provided by BPL are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by BPL and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.4** Where BPL gives advice, recommendations, information, assistance or service to the Customer or the Customer’s agent, regarding the Materials or Works then it is given in good faith and BPL shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same. In addition, none of BPL’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of BPL in writing nor is BPL bound by any such unauthorised statements.

2.5 Where the Customer is a tenant (and therefore not the owner of the land and premises where goods are to be installed) then the Customer warrants that the Customer has obtained the full consent of the owner for BPL to install the goods on the owner's land and premises. The Customer acknowledges and agrees that they shall be personally liable for full payment of the price for all services provided under this agreement and to indemnify BPL against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the goods and the provision of any related Services by BPL except where such claim has arisen because of the negligence of BPL when installing the goods.

2.6 The Customer agrees that they shall upon request from BPL provide evidence that;

- (a) they are the owner of the land and premises upon which the Services are to be undertaken; or
- (b) where they are a tenant, that they have the consent of the owner for the goods to be installed on the land and premises upon which the works are to be undertaken.

3. Change in Control

3.1 The Customer shall give BPL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by BPL because of the Customer's failure to comply with this clause.

4. Price and Payment

4.1 At BPL's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by BPL to the Customer in respect of Works performed or Materials supplied; or
- (b) BPL's Price at the date of delivery of the Works according to BPL's current pricelist; or
- (c) BPL's quoted Price (subject to clause 4.2) which shall be binding upon BPL provided that the Customer shall accept BPL's quotation in writing within thirty (30) days.

4.2 BPL 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, poor weather conditions, limitations to accessing the site or crawl spaces, availability of machinery, safety conditions including the discovery of asbestos, prerequisite work by any third party not being completed, change of design, 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 BPL in the cost of labour or materials which are beyond BPL's control.

4.3 At BPL's sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by BPL, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with BPL'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;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by BPL.

4.5 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and BPL.

4.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by BPL nor to withhold payment of any invoice because part of that invoice is in dispute.

4.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to BPL an amount equal to any GST BPL must pay for any supply by BPL under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

5. Provision of the Works

5.1 Subject to clause 5.2 it is BPL's responsibility to ensure that the Works start as soon as it is reasonably possible.

5.2 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that BPL claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond BPL's control, including but not limited to any failure by the Customer to:

- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify BPL that the site is ready.

5.3 At BPL's sole discretion, the cost of delivery is included in the Price or in addition to the Price.

5.4 Any time specified by BPL for delivery of the Works is an estimate only and BPL will not be liable for any loss or damage incurred by the Customer due to delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. If BPL is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then BPL shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

6. Risk

6.1 If BPL retains ownership of the Materials under clause 13 then:

(a) where BPL is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer 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 Customer or the Customer's nominated carrier takes possession of the Materials at BPL's address; or

(ii) the Materials are delivered by BPL or BPL's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).

(b) where BPL is to both supply and install Materials then BPL 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 Customer.

6.2 Notwithstanding the provisions of clause 6.1 if the Customer specifically requests BPL to leave Materials outside BPL'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 Customer, and it shall be the Customer'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 Customer's expense.

6.3 BPL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, BPL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

6.4 The installation of some appliances can cause water hammer or damage to existing pipe work. The Customer agrees to indemnify BPL against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.

6.5 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any plumbing connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective plumbing or dangerous access to crawl spaces) that BPL, or employees of BPL, reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then BPL shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 5.2 above) until BPL is satisfied that it is safe for the installation to proceed. BPL may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken, and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.

6.6 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where BPL is requested to merely clear such blockages, BPL can offer no guarantee against reoccurrence or further damage. In the event

of collapse during the pipe clearing process, BPL will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.

6.7 The Customer acknowledges and agree that where BPL has performed temporary repairs that:

(a) BPL offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and

(b) BPL will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.

6.8 The Customer acknowledges that BPL is only responsible for parts that are replaced by BPL and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify BPL against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

6.9 Where the Customer has supplied goods for BPL to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. BPL shall not be responsible for any defects in the goods, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of goods supplied by the Customer.

6.10 Notwithstanding clause 6.9 and subject to BPL's obligations under clause 20, the Customer accepts and acknowledges that any alleged claim made against BPL (where the Customer has supplied goods) shall be limited only to BPL's workmanship.

6.11 The Customer acknowledges that Materials supplied may:

(a) fade or change colour over time; and

(b) expand, contract or distort as a result of exposure to heat, cold, weather; and

(c) mark or stain if exposed to certain substances;

(d) be damaged or disfigured by impact or scratching; and

(e) create undesirable smells caused by a system as a result of its normal operation.

7. Specifications

7.1 The Customer acknowledges that:

(a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in BPL's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by BPL;

(b) while BPL may have provided information or figures to the Customer regarding the performance of the Materials, the Customer acknowledges that BPL has given these in good faith, and are estimates based on Clean Energy Council (CEC), Water Efficiency Labelling and Standards (WELS) scheme and/or industry prescribed estimates. The water efficiency may be less than estimates due to

factors out of BPL's control (including, but not limited to, water pressure, water source, the mineral content of water based on geographical location, etc.).

8. Customer's Responsibilities

8.1 It is the intention of BPL and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Works to be undertaken (where in BPL's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.

8.2 The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that BPL shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.

9. Surplus Materials

9.1 Unless otherwise stated elsewhere in this contract:

- (a) demolished Materials remain the Customer's property; and
- (b) Materials which BPL brings to the site which are surplus remain the property of BPL.

10. Access

10.1 The Customer shall ensure that BPL has clear and free access to the worksite at all times to enable them to undertake the Works. BPL 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 BPL.

11. Underground Locations

11.1 Prior to BPL commencing any work the Customer must advise BPL of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer 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.

11.2 Whilst BPL will take all care to avoid damage to any underground services the Customer agrees to indemnify BPL 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 11.1.

12. Compliance with Laws

12.1 The Customer and BPL 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.

12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

12.3 The Customer agrees that the site will comply with any WorkSafe guidelines and/or health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

12.4 Prior to the commencement of any Works BPL shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery BPL where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.

12.5 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by BPL in order to carry out the soundness test that parts within a gas appliance may be subject to fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies any costs associated with such an event shall be at the Customer's expense.

13. Title

13.1 BPL and the Customer agree that ownership of the Materials shall not pass until:

- (a) the Customer has paid BPL all amounts owing to BPL; and
- (b) the Customer has met all of its other obligations to BPL.

13.2 Receipt by BPL 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.

13.3 It is further agreed that:

- (a) until ownership of the Materials passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to BPL on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for BPL and must pay to BPL 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 BPL shall be sufficient evidence of BPL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with BPL to make further enquiries.
- (d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for BPL and must pay or deliver the proceeds to BPL on demand.
- (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of BPL and must sell, dispose of or return the resulting product to BPL as it so directs.
- (f) unless the Materials have become fixtures the Customer irrevocably authorises BPL to enter any premises where BPL believes the Materials are kept and recover possession of the Materials.
- (g) BPL may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Customer 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 BPL.

(i) BPL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

14. Personal Property Securities Act 1999 (PPSA)

14.1 Upon assenting to these terms and conditions in writing the Customer 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 and/or collateral (account) – being a monetary obligation of the Customer to BPL for Works – that have previously been supplied and that will be supplied in the future by BPL to the Customer.

14.2 The Customer 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 BPL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, BPL 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, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of BPL; and
(d) immediately advise BPL 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.

14.3 BPL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

14.5 Unless otherwise agreed to in writing by BPL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.6 The Customer shall unconditionally ratify any actions taken by BPL under clauses 14.1 to 14.5.

15. Security and Charge

15.1 In consideration of BPL agreeing to supply the Works, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15.2 The Customer indemnifies BPL from and against all BPL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising BPL's rights under this clause.

15.3 The Customer irrevocably appoints BPL and each director of BPL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Customer's Disclaimer

16.1 The Customer hereby disclaims any right to revoke or cancel any contract with BPL or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by BPL and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.

17. Defects In Materials

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

18. Returns

18.1 Conditions for Accepting Returns:

We'll only accept returns if: (a) You've followed the rules in clause 17.1. (b) We've agreed in writing to accept the return. (c) You need to send back the materials at your own cost within two (2) days of receiving them. (d) We won't accept returns for materials that haven't been stored or used correctly. (e) You need to return the materials in the same condition they were delivered, including all packaging, brochures, and instructions, in as good condition as possible.

18.2 Returns of Non-Defective Materials: We may choose to accept non-defective materials for return, but there might be a handling fee of fifteen percent (15%) of the value of the returned materials, plus any shipping costs.

18.3 Exceptions to Returns: Items that are not part of our regular stock or materials made specifically to your requirements cannot be returned or credited under any circumstances.

19. Warranties

19.1 Subject to the conditions of warranty set out in clause 19.2 BPL warrants that if any defect in any workmanship of BPL becomes apparent and is reported to BPL within one (1) year of the date of delivery (time being of the essence) then BPL will either (at BPL's sole discretion) replace or remedy the workmanship.

19.2 The conditions applicable to the warranty given by clause 19.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Customer to properly maintain any Materials; or

(ii) failure on the part of the Customer to follow any instructions or guidelines provided by BPL; or
(iii) any use of any Materials otherwise than for any application specified on a quote or order form;
or

(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease, and BPL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without BPL's consent.

(c) in respect of all claims, BPL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

19.3 For Materials not manufactured by BPL, the warranty shall be the current warranty provided by the manufacturer of the Materials. BPL 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.

19.4 The conditions applicable to the warranty given on Materials supplied by the Seller are contained on the "Warranty Card" that will be supplied with the Materials.

20. Consumer Guarantees Act 1993

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

21. Intellectual Property

21.1 Where BPL has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in BPL, and shall only be used by the Customer at BPL's discretion. Under no circumstances may such designs, drawings, and documents be used without the express written approval of BPL.

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

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

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

22.3 Further to any other rights or remedies BPL may have under this contract if a Customer has made payment to BPL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by BPL under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

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

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

- (a) any money payable to BPL becomes overdue, or in BPL's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by BPL;
- (c) the Customer 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

23. Cancellation

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

23.2 BPL 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 Customer. On giving such notice BPL shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to BPL for Works already performed. BPL shall not be liable for any loss or damage whatsoever arising from such cancellation.

23.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by BPL as a direct result of the cancellation (including, but not limited to, any loss of profits).

23.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

24. Privacy Act 1993

24.1 The Customer authorises BPL or BPL's agent to:

- (a) access, collect, retain and use any information about the Customer;
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by BPL from the Customer directly or obtained by BPL 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 Customer.

24.2 Where the Customer is an individual the authorities under clause 24.1 are authorities or consents for the purposes of the Privacy Act 1993.

24.3 The Customer shall have the right to request BPL for a copy of the information about the Customer retained by BPL and the right to request BPL to correct any incorrect information about the Customer held by BPL.

25. Dispute Resolution

25.1 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.

26. Construction Contract Act 2002

26.1 The Customer hereby expressly acknowledges that:

- (a) BPL 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 Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to BPL by a particular date; and
 - (iv) BPL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if BPL 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 Customer or by any person claiming through the Customer; 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 BPL exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to BPL under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of BPL suspending work under this provision.

27. Unpaid Seller's Rights

27.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for BPL to perform any other service in relation to the item and BPL has not received or been tendered the whole of any monies owing to it by the Customer, BPL shall have, until all monies owing to BPL are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

27.2 The lien of BPL shall continue despite the commencement of proceedings or judgment for any monies owing to BPL having been obtained against the Customer.

28. Service of Notices

28.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

29. General

29.1 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.

29.2 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 courts of New Zealand.

29.3 BPL shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by BPL of these terms and conditions (alternatively BPL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Materials).

29.4 BPL may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

29.5 The Customer cannot licence or assign without the written approval of BPL.

29.6 BPL may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of BPL's sub-contractors without the authority of BPL.

29.7 The Customer agrees that BPL may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for BPL to provide Materials to the Customer.

29.8 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.

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