**TERMS AND CONDITIONS OF TRADE (COMMERCIAL)
DIVER GROUP: Peter Diver Plumbing & Drainage Ltd; Peter Diver Southern Ltd; Canterbury Waterblast Ltd**

1. **Acceptance**
	1. These are the terms between us, Diver Group, and you, the Customer. If you accept a Quote from us, or otherwise engage us to carry out Work, you accept that these terms apply to that Work, and to all other goods and services we provide you from time to time (unless we otherwise agree in writing).
2. **Quotes**
	1. Quotes given are valid for 60 days, provided that:
		* 1. we may withdraw a Quote at any time before you accept it in writing; and
			2. Quotes are based on costs and charges applying at the date of Quote. Without limiting clause 10, any changes in cost arising from sources beyond our control (such as changes in prices charged by suppliers or subcontractors to us, or government charges) are to your account, and may be claimed as a Variation.
	2. Unless stated otherwise, Quotes are exclusive of GST and any credit card merchant fees.
	3. The fact that a Quote has been given, and the contents of that Quote, are commercially sensitive and confidential to us, and may not be disclosed to any person without our prior written consent.
3. **Our responsibilities**
	1. We will carry out the Work with reasonable skill and care, in accordance with the plans and specifications (if any), the Building Act 2004, the Building Code and any building consents issued in respect of the Work.
	2. We will remedy any defect in the Work which you notify to us in writing within 12 months of completion of the Work (if section 362Q of the Building Act 2004 applies to the contract) or within 90 days of completion of the Work otherwise. Your notice must be sufficiently detailed to clearly identify what Work is claimed defective. We are not liable for any defect within reasonable tolerances, failure to achieve standards of finish or detail beyond what is required by the contract (subject to consents and Variations) and for any defect caused by or arising out of the actions of any person outside our control, for any faults in the performance or durability of materials supplied by you, fair wear and tear, or failure to maintain the Work.
	3. We shall have a reasonable opportunity to rectify any defects identified and you may not engage anyone else to rectify the defects until a reasonable time has elapsed and you have given us at least 20 Working Days’ notice of your intention to engage someone else. If you engage someone else to rectify the defects before this time, then without prejudice to our other rights and remedies, to the maximum extent permitted by law, we will be immediately discharged from any further obligation or liability in respect to the Work.
	4. Any warranties given are only for normal domestic and commercial use and do not apply to any defects or damage not due to defective materials or workmanship, including those resulting from accidental damage, failure due to misuse or abuse (including failure to properly service the goods in accordance with the manufacturer’s instructions), alteration or repair of the goods other than by us, attachment of any parts or accessories other than as approved by us, excessive temperature or corrosive atmosphere. If the Works are for a newly constructed residential building constructed by a developer for the purposes of sale, warranties are assignable to the initial purchaser of the dwelling. In all other cases, warranties are only applicable to the Customer named in the Quote and are not assignable.
	5. These terms do not limit the implied warranties as set out in s362I to s362K of the Building Act 2004, nor any rights under the Consumer Guarantees Act 1993 (except to the extent validly contracted out under these terms).
4. **Timing**
	1. Subject to receiving sufficient access as set out in clause 5, we will commence the Work on the Start Date, and complete the Work by the Completion Date, in each case subject to any extensions of time to which it is entitled under clauses 4.2 and 4.3. If it is necessary to work outside ordinary working hours to meet your completion target or due to any other circumstances outside our control, you will be liable for any extra cost incurred, as set out in clause 10.3.
	2. We are not liable for any delay in carrying out the Work due directly or indirectly to circumstances reasonably outside our control, including disputes with subcontractors, bad weather, force majeure, accidents, fire, shortage of labour and/or materials, labour disputes, variations, failure of suppliers to deliver, or acts of any government, territorial authority or similar body.
	3. If an extension of time is required to the Completion Date due to any of the above reasons above or any other reason beyond our reasonable control, we shall provide written notice to you of any such extension reasonably promptly after the delay becomes apparent, together with details of the new Completion Date.
	4. If the Work is delayed due to any failure or delay on your part (including other contractors organised by you not completing their work), we are entitled to a Variation for that additional cost, as set out in our Quote and clause 10. If delays require that the Work is rebooked, you acknowledge that we may need up to 4 weeks’ notice to rebook the Work.
5. **Installation**
	1. You shall give us access to the Site and provide proper facilities for carrying out the work, including use of any scaffolding, lifts, crane sand hoists, within a reasonable time after acceptance of the Quote or at a date notified by you and agreed by us in writing.
	2. You are responsible for ensuring that you have sufficient legal entitlement to the Site to allow the Work to be carried out, for surveying the Site and advising us of boundaries and the specific location of underground utilities.
	3. You shall advise us of any particular hazards relating to the Site, and take all practicable steps to ensure your own safety throughout the Work and cooperate fully in implementing our health and safety and environmental policies and procedures and obligations under the relevant health and safety legislation.
	4. If any materials, plant, and equipment required for the Work expressed to be ‘client supplied’ or ‘owner supplied’, you are responsible for ensuring that such materials comply with the Building Code and are fit for purpose, and all plant and equipment complies with all health and safety legislation, codes and requirements, and, if we require, shall sign a declaration and indemnity to this effect. Any owner-supplied materials which are faulty shall not constitute a defect in the Work under clause 3.2.
6. **Consents**
	1. You are responsible for obtaining all necessary consents for the Work (including for any Variations) and a code compliance certificate (if required) when the Work is complete. We may require that you provide a copy of all necessary consents before commencing the Work or any Variation. Where a consent is required and you have failed to obtain it, we may (but are not required to) lodge an application for the consent as your agent and at your expense.
7. **Plans and specifications**
	1. We are entitled to rely on the accuracy of and shall not be obliged to check any plans, specifications or other information supplied by you.
	2. If plans and specifications change, we may charge a processing fee of 5% of the value of the variation, in addition to the cost of the variation.
8. **Substitution of materials**
	1. We may substitute any material, finish, product or system (“materials”) specified in the plans and specifications or the Quote where:
		* 1. the materials are unavailable or their supply is delayed or it is impractical for the relevant materials to be used; and
			2. the substitution is of at least equal quality and as close as possible nature to the materials specified in and/or reasonably inferred from the plans and specifications or the Quote.
9. **Payment**
	1. We will issue progress payment invoices on a regular basis. Invoices are payable in full on the 20th of the month following the date of invoice. If the invoice is or is accompanied by a payment claim under the Construction Contracts Act 2002, any payment schedule under that Act must be provided within 10 Working Days from the date of the invoice.
	2. If the Quote provides for invoices to be submitted on certain milestones as set out in the Quote, and the Work is delayed or suspended for any reason outside our control, we may issue an invoice at the time a relevant milestone would otherwise have been achieved.
	3. Any amount which is not paid within due will incur interest at the rate of 2.5% per month compounding daily on the outstanding balance (both before or after any judgement, and in addition to any other rights and remedies). We also reserve the right to claim the costs of recovering any debt (including debt collection and legal costs on a solicitor-client basis).
	4. Any deposit paid shall be held by us and applied towards payment of the final invoice. If the final invoice is less than the deposit, we will refund the balance to you on issuing the final invoice. If the Quote provides for a deposit, and the deposit is not paid in full 7 days before the Work is due to start, we may at our option and without further notice suspend and/or cancel the contract for the Work, without prejudice to any other rights and remedies.
10. **Variations**
	1. You may request variations to the Work, but may not (unless otherwise agreed in writing) request a Variation omitting or reducing the Work to be performed. With the exception of the Variations set out in clause 10.2, all variations must be in writing and contain the following:
		* 1. A description of the work required under the Variation;
			2. Any required amendments to the consents as issued or any additional approvals, consents or licences that will be required;
			3. Any agreed adjustment to the Contract Price and/or the Completion Date for the Work.
	2. We are entitled to claim a Variation for any emergency works required for health and safety or environmental reasons; additional work and/or changes to the Work (including where caused by any consent requirements); unforeseen physical conditions, substitutions of any materials, wages and price changes; or any increase in costs arising from a failure or delay on your part in complying with these terms. No allowances have been made in the Contract Price for the handling of hazardous substances (including asbestos), and we are also entitled to claim a Variation for any such costs.
	3. For the purpose of calculating any variation to quoted work under this clause 10, labour will be charged at our standard commercial rates from time to time (including mileage / travel charges), and materials will be charged at cost plus a margin of 30%. A surcharge applies to work carried out after-hours and on statutory holidays.
11. **Design limitation**
	1. Notwithstanding anything to the contrary contained in these terms or any other agreement between us, our maximum liability to you in respect of any design by us shall not in any event exceed an amount equal to the amount recoverable by us for such a claim under our professional indemnity insurance policy.
12. **Subcontractors**
	1. We may sublet the whole or any portion of the Work, and will be responsible for the work of our subcontractors.
13. **Insurance**
	1. All good and materials are at your risk while on the Site or under your control. You are responsible for insuring the Work (and we may require that proof of such insurance is provided).
	2. We hold public liability insurance up to $10,000,000 against liability for loss or damage to any property, or injury or death or illness which arises from carrying out the Work.
14. **Our property on Site**
	1. You acknowledge that:
		* 1. the legal, equitable and beneficial ownership and title to any plant, equipment or materials brought onto the Site by us remains vested in us at all times;
			2. title in all materials supplied as part of the Work remains vested in us until all amounts owing to us have been paid in full.
	2. For the purposes of the Personal Property Securities Act 1999 (PPSA), you agree that a security interest is granted in your present and after acquired property (including the property described in clause 14.1 and all proceeds of that property) to secured all amounts owing to us or our Associates. We may apply all payments in such manner as is desirable to preserve any purchase money security interest in that property. Nothing in section 116, 120(2), 121, 125 to 127, 129, 131, 133 and 134 of the PPSA applies to the security interest, and you waive the right to receive a verification statement in respect of any security interest.
15. **Signage**
	1. You agree that we have the right to erect signage on the Site advertising ourselves during the period of the Work.
16. **Suspension and termination**
	1. Without prejudice to any of our other rights or remedies, we may suspend the Work (including the provision of documentation) at any time if you default in any of your obligations under these terms, including failing or refusing to pay any invoiced amount in full by the due date for its payment.
	2. We may terminate our obligations under these terms if at any time you:
		* 1. become bankrupt, have a liquidator, receiver or statutory manager appointed; or
			2. default in your obligations under these terms and do not remedy that default within 5 Working Days of receiving a notice requiring remedy.
17. **Business Transactions**
	1. If the Work is to be carried out for the purposes of a business, then to the maximum extent permitted by the law, all guarantees, warranties, rights, or remedies implied by the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other guarantees, warranties, or provisions that would otherwise be implied by statute or rule of law are expressly excluded.
18. **Customer Information**
	1. Each person signing the credit application agrees that we may obtain information about your creditworthiness for the purposes of deciding whether to provide (or to continue to provide) goods and services to you. You consent to any person providing us with such information, and irrevocably authorise us to complete a credit check on you and/or disclose information to any person for any purpose relating to your credit or debt collection, including loading and checking details with any credit reporting agency.
19. **Notices**
	1. All notices are to be in writing and hand delivered or sent by post or email to the addresses set out in the Quote. Our address for service and postal address is the physical address set out in the Quote.
	2. A notice is deemed to be received:
		* 1. if personally delivered, when delivered; or
			2. if posted, 5 Working Days after posting; or
			3. if sent by email, when the email leaves the sender’s communications system, provided that the sender does not receive any error message relating to the sending of the email.
	3. Despite clause 19.2, any notice received after 5pm, or received on a day that is not a Working Day, is deemed not to have been received until 9am on the next Working Day.
20. **Dispute Resolution**
	1. If there is any dispute relating to these terms or the Work, the party raising the dispute must give the other party written notice specifying particulars of the dispute. If negotiations between the parties do not resolve the dispute, either party shall refer a dispute to adjudication under the Construction Contracts Act 2002 or, at our option, refer the matter to the Master Plumbers Association for settlement through the Association’s Disputes Procedure. If the dispute is referred to adjudication under the Construction Contracts Act 2002, for the purposes of s33 (1) (c), the nominating body shall be the Arbitrators’ and Mediators’ Institute of New Zealand.
21. **Definitions**
	1. In these terms:

**Associate** means a person who is associated with Diver Group: Peter Diver Plumbing & Drainage Limited, Peter Diver Southern Limited or Canterbury Waterblast Limited, within the meaning of section 12 of the Financial Markets Conduct Act 2013.

**Completion Date** means the expected date on which we reasonably believe the Work will be completed, subject to extensions of time, as stated in the Quote.

**Contract Price** means the price for the Work calculated in accordance with the Quote (or, if the Quote doesn’t contain a Contract Price, charged in accordance with clause 10.3), subject to any adjustments under these terms.

**Including** does not imply limitation.

**Master Plumbers** **Association** means Master Plumbers, Gasfitters & Drainlayers NZ Incorporated.

**Quote** means a quote, quotation, letter, email or other documentation given by us to you describing the Work to be carried out.

**Site** means the site address at which the Work is to be carried out, as stated in the Quote.

**Start Date** means the expected start date at which we reasonably believes physical work will commence on Site, as stated in the Quote.

**Variation** means a variation to the Works under section 11.

**Work** means the work stated in the Quote (subject to consents and Variations).

**Working Day** has the meaning given in the Construction Contracts Act 2002.