

TERMS AND CONDITIONS OF TRADE – GOODS AND SERVICES

1. Definitions

In these terms of trade:

"Contract Price" means the cost for the supply of Goods and Services to the Customer by FRL.

"Customer" means the person or entity seeking from FRL the supply and installation of bathroom ware or any person acting with ostensible authority on behalf of the Customer.

"FRL" means **Form Renovations Limited**

"Goods" means goods supplied by FRL to the Customer at any time.

"Guarantor" means any party executing a Guarantee of the Customer's Account with FRL.

"Order" means the order or orders of the Customer to FRL to supply Goods and Services.

"Practical Completion" means the point at which the building project is capable of beneficial occupation and use, or complete except for minor omissions and/or defects that can be remedied without undue interference or disturbance to the occupier.

"Premises" means the premises owned or leased by the Customer and where the Goods and Services are to be installed and provided.

"Proposal" means a proposal for the scope of work, including reasonable provision of goods and services required to achieve completion and delivery of a renovation project as specified.

"PPSA" means the Personal Property Securities Act 1999.

"Services" means services supplied by FRL to the Customer at any time.

"Variation cost" means the cost for the supply of goods and services which fall outside of the scope of work as defined in a proposal.

2. Order

An Order will be on such forms as FRL may require from time to time.

3. Acceptance

Each Order shall constitute acceptance by the Customer of these Terms and Conditions of Trade.

4. Customer Responsibilities

- (a) The Customer shall allow FRL together with its nominated agents and subcontractors free and unobstructed access to the customer's premises during hours of work being 8:00 am to 5:30 pm Monday to Friday unless otherwise agreed.
- (b) Any defects at the time of installation relating to the customer's premises including but not limited to structural and non-structural walls, linings, unlevel or out of plumb walls and/or floors, moisture ingress, services (including but not limited to plumbing/drainage, electrical, gas etc) or other general damage which fall outside the scope of work, shall be repaired at the customer's cost and be added as a variation to the contract price which is payable immediately upon the issue of a GST invoice levied by FRL.
- (c) Any additional work undertaken by FRL outside the scope of works allowed for in the contract may incur time and/or cost adjustments which will be charged as a variation to the contract price and is payable immediately upon an invoice levied by FRL.
- (d) Any goods to be provided by the customer as part of the scope of works must be delivered to site by the customer prior to works commencing. Failure to meet this requirement may incur time and/or cost adjustments which will be charged as a variation to the contract price and is payable immediately upon the issue of a GST invoice levied by FRL.
- (e) Any goods provided by the customer as part of the scope of works which prove faulty or not suitable for their intended application may incur time and/or cost adjustments which will be charged as a variation to the contract price and is payable immediately upon the issue of a GST invoice levied by FRL.
- (f) Any services to be provided by the customer as part of the scope of works must be carried out in a timely manner according to a schedule provided by FRL. Failure to meet this requirement may incur time and/or cost adjustments which will be charged as a variation to the contract price and is payable immediately upon the issue of a GST invoice levied by FRL.
- (g) Failure by a customer to meet their financial obligations, including meeting payment due dates as set out in this document, may result in project delays.
- (h) Any delay to a project resulting from the failure of a customer to meet their obligations as set out in this document may incur time and administration costs which will be charged as a variation to the contract price and is payable immediately upon the issue of a GST invoice levied by FRL.

5. Delivery

Where the Order makes provision for delivery then delivery shall take place at the customer's premises.

6. Access for Installation and Provision of Services

- (a) The Customer shall provide for the purposes of installation and provision of Services at no cost to FRL, all necessary facilities including power, lighting, unloading, hoisting and lifting facilities, labour, site preparation and employee amenities which comply with the statutory requirements.
- (b) Upon FRL delivering Goods or providing Services to the Customer shall ensure adequate safe storage facilities are provided for protection against theft and damage of the Goods or any equipment or other items belonging to FRL at no cost to FRL.
- (c) The Customer acknowledges that it solely shall be responsible for arranging and providing convenient access for the Goods and provision of Services to the premises including but not limited to access thereto by way of stairs, lift or crane as the case may require.
- (d) If the Customer fails to supply convenient access as aforesaid for any reason then FRL may make a further charge to the Customer to cover the additional costs it incurred.
- (e) If the Customer is not in a position to accept or take delivery of the Goods or accept provision of the Services the Customer shall be responsible for all additional charges caused thereby.
- (f) Where installation or supply is required by the Customer to be co-ordinated with other trades of the Customer then the Customer shall provide FRL with a schedule detailing all relevant information so as to allow FRL sufficient time to coordinate with the Customer's other tradespersons.
- (g) The delivery or supply period shall be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond FRL's control.

7. Health and Safety in Employment Act 1992

FRL shall be responsible for the actions of its employees in terms of section 15 of the Health and Safety in Employment Act 1992 ("HSEA"). The Customer shall be responsible for compliance with the HSEA in respect to the premises and shall advise FRL prior to commencement of any work of any hazards on the premises.

8. Time of Performances

Time shall in no case be of the essence in respect of the delivery of Goods or the provision of Services. FRL shall not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer shall not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase. Delivery of Goods by FRL to a carrier is deemed to be delivery to the Customer.

9. Terms of Payment

- (a) Unless otherwise specified, payment for all Orders shall be made as follows:
 - (i) An initial deposit of 35% of the total Contract Price is to be paid immediately upon acceptance of the contract of Goods and Services;
 - (ii) A second payment of 30% of the total Contract Price is due on the day FRL commences work for the supply of Goods and Services to the Customer;
 - (iii) A third payment of 30% of the Contract Price is due five (5) working days after FRL commences work for the supply of Goods and Services to the Customer;

- (iv) A third payment of 2.5% of the Contract Price is due ten (10) working days after FRL commences work for the supply of Goods and Services to the Customer; and
 - (v) A final payment of 2.5% being the balance of the Contract Price is due immediately after practical completion of the supply of Goods and Services to the Customer.
- (b) Progress Payments claimed under the Construction Contracts Act 2002 shall be made no later than 20 days after a payment claim is served on the Customer.
 - (c) FRL may, at its sole discretion, require payment of the deposit by the Customer prior to processing any Order.
 - (d) An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.
 - (e) Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a day-by-day basis until payment is made in full.
 - (f) All costs of or incurred by FRL as a result of a default by the Customer including but not limited to administration charges, debt collections costs and legal costs as between solicitor and client shall be payable by the Customer.
 - (g) If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, FRL may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

10. Proposal and Quotation

Where any proposal or quotation is given by FRL for the supply of Goods and Services:

- (a) Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
- (b) The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary; and
- (c) FRL reserves the right to alter the quotation because of circumstances beyond its control.
- (d) It is accepted that FRL has exercised all due diligence in compiling any proposal, and FRL will not be held liable for any time or costs incurred for works which fall outside of the scope of work, which may be required to achieve completion and delivery of a project as specified.

11. Taxes and Duties

Unless expressly included in any quotation given by FRL, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods and Services to the Customer are not included in the price and shall be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of FRL at law, the price shall be increased by the amount of such taxes or duties.

12. Payment Allocation

FRL may in its discretion allocate any payment received from the Customer towards any invoice that FRL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer FRL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FRL, payment shall be deemed to be allocated in such manner as preserves the maximum value of FRL's purchase money security interest in the products.

13. Errors or Omissions

Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice shall be subject to correction.

14. Risk

From the time of dispatch to the Customer by FRL, risk in all Goods supplied shall pass to the Customer and any loss, damage or deterioration to the Goods shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

15. Ownership/General Lien

- (a) FRL shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.
- (b) If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with FRL until payment is made. FRL's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
- (c) FRL shall have a right to stop and retrieve the Goods in transit whether or not ownership has passed.

16. Ownership

Until the Customer makes payment, the Customer agrees to:

- (a) Enable the Goods to be readily identifiable as the property of FRL;
- (b) Hold the Goods as trustee for FRL and will deal with the Goods as agent for and on behalf of FRL (but will not hold the Customer out as an agent to any third parties); and
- (c) If the Goods are re-sold, the proceeds of re-sale will belong to FRL and the Customer shall keep the proceeds of sale in a separate account for which separate records are kept.

17. Merger with Other Goods

If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the products and services shall remain with FRL until the Customer has made payment for all Goods and where those Goods are mixed with other property so as to be part of or constituent of any new goods title to those new goods shall be deemed to be assigned to FRL as security for the full satisfaction by the Customer of the full amount owing by the Customer to FRL.

18. Recovery of Goods

- (a) In the event of non-payment, or if payment of the Customer's Account is overdue, FRL shall be entitled without prejudice to any right it has at law or in equity to enter the premises or any place where the Goods are stored whether the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.
- (b) The Customer warrants to FRL that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.
- (c) FRL will not be responsible for any damage reasonably caused in the course of removal of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies FRL to the full extent in respect of damage caused in the course of removal from the property of a third party.
- (d) FRL may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with FRL. Any shortfall will remain the liability of the Customer. The Customer indemnifies FRL for all costs and expenses including legal costs as between solicitor and client which FRL may incur in recovering the Goods and any monies owed to it.

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19. Warranties

- (a) FRL provide a six (6) year warranty on all workmanship in respect to Goods and Services. The warranty period will commence from the date of practical completion, but will not be active until such time as the customer has fulfilled their obligations as set out in this document.
- (b) FRL will provide to the Customer any product warranty on Goods supplied for which a supplier or manufacturer warranty is available.
- (c) Any warranty claims by the Customer are to be provided in writing to FRL.
- (d) The customer shall notify FRL of any warranty claim within seven days of a defect or warrantable issue manifesting itself. Subsequent or secondary damage caused by prolonged exposure to a defect or warrantable issue will not be covered by FRL's six year warranty.
- (e) The Consumer Guarantees Act 1993 applies to any Goods and Services supplied by FRL, except where any such supply or services are to the Customer for the purpose of its business, in which event the Consumer Guarantees Act 1993 shall not apply.
- (f) In respect to any warranty claim FRL will at its discretion replace or repair any faulty Goods.

20. Compliance

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation operation and provision of the Goods and Services.

21. Cancellation

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

22. Personal Property Securities Act 1999

- (a) The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of FRL in all Goods and Services previously supplied by FRL to the Customer (if any) and all after acquired Goods and Services supplied by FRL to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant a "purchase money security interest" to FRL, as that term is defined in the PPSA.
- (b) The Customer acknowledges and agrees that by assenting to these terms the Customer grants a security interest (by virtue of the retention of title clause in these Terms and Conditions of Trade) to FRL and all Goods and Services previously supplied by FRL to the Customer (if any) and all after-acquired Goods and Services supplied by FRL to the Customer (or for the Customer's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Customer's purchase order.
- (c) The Customer undertakes to:
 - (i) Sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which FRL may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
 - (ii) Not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of FRL;
 - (iii) Give FRL not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
 - (iv) Pay all costs incurred by FRL in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions of Trade including executing subordination agreements;
 - (v) Be responsible for the full costs incurred by FRL (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and
 - (vi) The Customer waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA upon enforcement.
- (d) Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by FRL, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- (e) To the maximum extent permitted by law, the Customer waives its rights and, with FRL's agreement, contracts out of its rights under sections referred to in sections 107(2), 8(e) and (g) to (l) of the PPSA.
- (f) The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms, and, with FRL's agreement, contracts out of such sections.
- (g) The Customer and FRL agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods and Services if and only for as long as FRL is not the secured party with priority over all other secured parties in respect of those Goods and Services.
- (h) The Customer agrees that immediately on request by FRL the Customer will procure from any persons considered by FRL to be relevant to its security position such agreement and waivers as FRL may at any time require.

23. Security Interest

The Customer gives FRL a Security Interest in all of the Customer's present and after-acquired property that FRL has performed services on or to or in which goods or materials supplied or financed by FRL have been attached or incorporated.

24. Events of Default

All payments shall become immediately due to FRL and FRL may at its option suspend or terminate these Terms and Conditions of Trade and/or exercise any of the remedies available to it under these Terms and Conditions of Trade in the event that:

- (a) The Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- (b) The Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993; or commits any act of bankruptcy.

25. Liability

- (a) FRL's liability to the Customer shall be limited to the value of the Order supplied.
- (b) FRL shall assume no liability for any damage to wall linings, services, or floor linings in completing its Goods and Services but will exercise all due care completing those services.
- (c) The Sale of Goods Act 1908, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon FRL which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on FRL's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- (d) Except as otherwise provided above FRL shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by FRL to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by FRL to the Customer.
- (e) FRL shall not be liable for any breach due to the Customer's failure to meet the terms or conditions imposed by any manufacturer or product warranty.
- (f) The Customer shall indemnify FRL against all claims and loss 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 FRL or otherwise, brought by any person in connection with any matter, act, omission, or error by FRL its agents or employees in connection with the Goods and Services.

26. Suitability of Goods and Services

The Customer must satisfy itself that the Goods and Services as ordered are fit and suitable for the purpose for which they are required. FRL makes no warranties or representation and expressly negates any implied or expressed condition that the Goods and Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods and Services whether singularly or in combination with other Goods and Services.

27. Personal Guarantee of Company Directors or Trustees

If the Customer is a Company or Trust, the Director(s) or Trustee(s) signing this contract, in consideration for FRL agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally guarantee as principal debtors to FRL the payment of any and all moneys now or hereafter owed by the Customer to FRL and indemnify FRL against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in these Terms and Conditions of Trade. The signatories and the Customer shall be jointly and severally liable under these Terms and Conditions of Trade and for payment of all sums due hereunder.

28. Assignment

- (a) The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of FRL.
- (b) FRL is entitled at any time to assign to any other party all or any part of a debt which is owing to FRL.
- (c) FRL may also assign or sub-contract any part of the work which is to be performed under any contract.
- (d) In respect of any assignment by FRL pursuant to this clause, the Assignee shall be entitled to the full rights of FRL.

29. Disputes

- (e) In the event of any dispute arising between FRL and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- (f) In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- (g) Nothing in this clause prevents FRL from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

30. Notices

All notices required or committed under these Terms of Trade are to be served as provided in sections 353, 359, 360 and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.

31. Validity

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.

32. Changes of General Terms and Conditions

- (a) FRL may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- (b) Failure by FRL to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of the rights or obligations FRL has under these Terms and Conditions of Trade.

40. Force Majeure

Neither FRL nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.

41. Entire Agreement

These Terms and Conditions of Trade constitute the entire agreement and supersede and extinguish all prior agreements and understandings between FRL and the Customer.

42. Other Agreements

If there is inconsistency between these Terms and Conditions of Trade and any order submitted by the Customer or any other arrangement between FRL and Customer, these Terms and Conditions of Trade prevail unless otherwise agreed in writing by the parties.

43. Governing Law

These Terms and Conditions of Trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.