

TERMS OF TRADE
HARRISON BLOY PLUMBING & BATHROOMS LIMITED

1. APPLICATION OF TERMS

- 1.1. Application:** These Terms of Trade apply to all supplies of goods and services by Harrison Bloy to the Customer.
- 1.2. Version:** This version of the Terms of Trade is effective from 1 November 2017 and replaces any earlier version.
- 1.3. Inconsistency:** If these Terms of Trade are inconsistent with any other terms relating to the supply of goods or services by Harrison Bloy to the Customer, these Terms of Trade will prevail.

2. DEFINITIONS AND INTERPRETATION

- 2.1. Definitions:** In these Terms of Trade, unless the context otherwise requires:

- (a) **account receivable, collateral, equipment, financing change statement, financing statement, inventory, proceeds, security interest, and verification statement** have the meanings given to those terms by the PPSA;
- (b) **Application Form** means Harrison Bloy's form of application for a credit account completed by the Customer and approved by Harrison Bloy (if any);
- (c) **Business Days** means any day excluding Saturdays, Sundays, and statutory public holidays;
- (d) **Consumer Goods** means means goods or services that are used or acquired for use primarily for personal, domestic, or household purposes;
- (e) **Customer** means the person to be supplied goods and services by Harrison Bloy under these Terms of Trade, and, where the context allows, includes the Customer's employees, contractors, and other agents;
- (f) **Harrison Bloy** means Harrison Bloy Plumbing & Bathrooms Limited;
- (g) **PPSA** means the Personal Property Securities Act 1999;
- (h) **Terms of Trade** means these terms of trade, as varied from time to time in accordance with clause 13.1;
- (i) **we, us, or our** refers to Harrison Bloy; and
- (j) **you or your** refers to the Customer.

- 2.2. Parties:** References to any party include, where applicable, that party's executors, administrators, successors, and permitted assigns.

- 2.3. Plural and Singular:** References to the singular include the plural and vice versa.

- 2.4. Headings:** Headings are for ease of reference only, and will not affect the interpretation of these Terms of Trade.

- 2.5. Monetary Amounts:** All monetary amounts referred to in, or payable under, these Terms of Trade are in New Zealand dollars, and must be paid in that currency.

- 2.6. Negative Obligations:** An obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

- 2.7. Inclusive Expressions:** The term 'including' or any similar expression will be deemed to be followed by the words 'without limitation'.

3. DELIVERY AND RISK

- 3.1. Insurance and Risk:** You are responsible for insurance of, and assume all risk in, the goods from the time they leave our premises.

- 3.2. Place of Delivery:** Goods will be delivered to the place you direct or, if there is no direction, to your premises.

- 3.3. Delivery Costs:** You will pay all costs of delivering the goods. If we deliver any order in instalments, then each delivery will be deemed to be a separate contract.

- 3.4. Possession:** You do not have the right to possess goods until they are delivered to, or collected by, you or your agent. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent and you are still directly responsible to us under these Terms of Trade.

- 3.5. Shortage and Damage:** All claims for shortage or damage must be made to the carrier and to Harrison Bloy within 24 hours of the date and time of delivery.

- 3.6. Delay:** We will make every effort to ensure delivery of goods and performance of services is on time. However, we will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

4. QUOTATIONS, ORDERS, AND PRICE

- 4.1. Price:** Unless otherwise agreed in writing, prices for goods or services are as per our rates prevailing at the date when you place an order for goods or services. Prices are subject to alteration in our sole discretion and without notice to you.

- 4.2. Quotations:** Quoted prices are valid for the time stated on any quotation, or if no time is stated, five Business Days.

- 4.3. Assembly:** Unless otherwise stated in writing, all goods will be box shipped and it is your responsibility to assemble, configure, or install the goods, as necessary.

- 4.4. Taxes and Duties:** You agree to pay goods and services tax and any other government duties, levies, or taxes relating to the goods or services.

- 4.5. Support Services:** All installation and other support services will be charged out at Harrison Bloy's rates prevailing at the date the service is supplied.

- 4.6. Changes to Orders:** Any variation, waiver, or cancellation of an order by you will have no effect unless accepted in writing by Harrison Bloy. If Harrison Bloy accepts a variation, waiver, or cancellation, we may levy you a handling charge of up to 20% of the price of the goods.

5. PAYMENTS AND PROPERTY

- 5.1. Payment:** Unless we have agreed in writing to extend credit to you, you must pay for all goods in full before delivery or collection.

- 5.2. Credit:** Where we have agreed in writing to extend credit to you, and unless otherwise advised to you in writing, you must pay in full, without deduction or setoff, by the 20th of the month following the month the invoice is issued. Your payment is made only when funds have fully cleared through the banking system into our bank account.

- 5.3. Late Payment:** If you have not paid in full by the due date, we may charge you interest, compounding monthly on the last

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day of each month, on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bankers. We may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods, or performance of further services, until the account is fully repaid.

- 5.4. Inventory:** Payments you make to us will be applied firstly to any amount owing for goods that have been purchased as inventory and that have been sold by you, and secondly to payment for goods supplied by us that have not been sold by you.
- 5.5. Retention of Ownership:** The proprietary rights and interests in, and ownership of, the goods, whether in their original form or incorporated in or attached to another product, will not pass to you until Harrison Bloy receives payment in full of the purchase price of the goods and all other amounts you owe to Harrison Bloy for any reason.
- 5.6. Bailee:** Until ownership passes to you in accordance with clause 5.5, you will receive, hold, and use the goods as a fiduciary bailee for Harrison Bloy, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.
- 5.7. Trading Stock:** Unless otherwise notified in writing, where goods are sold to you as inventory or consignment stock or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods) you are authorised to sell the goods in the ordinary course of your business, but you must hold any accounts receivable or other proceeds for our benefit. If you use any proceeds to purchase replacement inventory, whether from Harrison Bloy or a third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all amounts owing to us are paid.
- 5.8. Equipment:** You must not resell or part with possession of any equipment that we supply for your use before you have paid for it in full, unless we have given you written consent.
- 5.9. Refusal of Delivery:** Notwithstanding clauses 5.1 and 5.2 above, all payments will become due to Harrison Bloy if:
- (a) you refuse to accept delivery of any goods without reasonable cause;
 - (b) we reasonably believe information you have given us in the Application Form is not or no longer correct and you have failed to give us correct information within 5 Business Days of our request;
 - (c) without our consent you sell or otherwise dispose of any equipment, machinery, or software that has not been paid for;
 - (d) you become insolvent, commit an act of bankruptcy, or if a receiver, administrator, liquidator, or statutory manager is appointed over any of your assets or undertaking;
 - (e) you fail to comply with any of the provisions of clause 6; or
 - (f) you make or attempt to make an arrangement or composition with creditors.
- 5.10. Consumer Goods:** Where you acquire Consumer Goods from us on credit, nothing in clauses 5.11 or 6.6 will limit or derogate from rights you may have under the Credit

(Repossession) Act 1997. Where you acquire Consumer Goods, we will have the right to take possession of the consumer goods if:

- (a) you are in breach of any part of clauses 5 or 6 of these Terms of Trade; or
- (b) the goods are at risk. Goods are "at risk" if we have reasonable grounds to believe that the Consumer Goods have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement.

Where we have the right to take possession of goods, you give us the right to enter your premises to remove the goods. In exercising our rights of entry we will comply with our obligations under the Credit (Repossession) Act 1997.

- 5.11. Collateral at Risk:** Except in relation to Consumer Goods to which clause 5.10 will apply instead of this clause 5.11, where Harrison Bloy reasonably believes that any collateral is at risk or that you are or will be in breach of any part of clauses 5 or 6 of these Terms of Trade:

- (a) Harrison Bloy or its agents may enter your premises without further notice to you or any other person, to remove any goods that are the property of Harrison Bloy, including goods installed in or affixed to other goods, using such force as is necessary and without prejudice to any other rights of Harrison Bloy; or
- (b) Harrison Bloy may appoint a receiver of all or any part of the collateral (being goods supplied by Harrison Bloy together with proceeds in any other form) in accordance with clause 25 of the Auckland District Law Society Memorandum of General Terms and Conditions 2015/4326, as amended from time to time. That clause is incorporated into these Terms of Trade in its entirety, together with any other clauses necessary for its operation.

- 5.12. Indemnity:** You indemnify Harrison Bloy against all costs and claims arising from the exercise of its rights under this clause 5.

6. SECURITY INTERESTS

- 6.1. Mortgage:** If called upon to do so by Harrison Bloy, you will grant to us an all obligations mortgage, in the then current Auckland District Law Society form, over any real property in which you have a legal or beneficial interest.
- 6.2. Security Interest:** If we already have a security interest in the goods and their proceeds, that security interest is continued under these Terms of Trade. Otherwise, you grant us a security interest in the goods. Our security interest covers the goods and their proceeds to the value of all goods and services that we have supplied to you, whether or not they have become accessions to other goods or processed or commingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices. Where goods have become mixed with other similar goods supplied by other persons, you grant us a security interest in the mixed goods to the value of the goods in the mixture that we have supplied to you but which have not yet been paid for. Our security interest also covers any other amounts owing to us including enforcement costs arising from your breach of these Terms of Trade.

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6.3. Financing Statement: You will do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds, and you will advise us immediately in writing of any changes to that information. You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest. You agree that nothing in sections 114(1)(a), 132, 133, and 134 of the PPSA will apply to these Terms of Trade or the security interest under it, and waive your rights under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

6.4. Information Request: You will provide Harrison Bloy, within 2 Business Days of its written request, with copies of all security interests registered over your personal property. You authorise Harrison Bloy to request information from any secured party relating to any registered security interest in any personal property.

6.5. Financing Statement Costs: Harrison Bloy may require you to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by Harrison Bloy, whether or not the charge was initiated by you.

6.6. Repossession of Goods: Subject to any rights you may have under clause 5.10, if we repossess goods under these Terms of Trade, we may retain those goods or dispose of them without notice to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any amounts owing to us. We will not be obliged to provide you with a statement of account or pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate or resupply any repossessed inventory or equipment to you.

6.7. PPSR Searches: You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

7. HARRISON BLOY WARRANTIES

7.1. Manufacturers' Warranties: Goods are subject to the manufacturers' warranties only. Harrison Bloy will pass on the benefit of those warranties to you, without itself being directly liable to you under any warranty.

7.2. Warranties Void: Any warranty may be voided by unreasonable use, damage or misuse of equipment, problems caused by the misuse of software or faulty software, damage after the goods left Harrison Bloy's control, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications, or the use of hardware, software, or consumables not supplied by Harrison Bloy.

7.3. Warranty Assistance: We may refuse warranty assistance if any amount you owe is overdue.

7.4. Non-Consumer Goods: Where the goods or services that you acquire from Harrison Bloy are not Consumer Goods, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties, and guarantees set out in the Sale of Goods Act

1908 or implied by law will not apply and are excluded from these Terms of Trade.

8. CUSTOMER WARRANTIES

8.1. Consumer Goods: If you acquire any goods or services from Harrison Bloy for re-supply as, or to incorporate or attach any goods or services acquired from Harrison Bloy into, Consumer Goods, you warrant that:

(a) if you supply the Consumer Goods directly to an end user/consumer you will do so using terms and conditions of supply that exclude liability for any claims against Harrison Bloy under the Consumer Guarantees Act 1993; and

(b) if your customer acquires any goods or services for re-supply, your customer and each person in the distribution chain will exclude liability in its contract of supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the goods for business purposes.

8.2. Consumer Goods Indemnity: You agree to indemnify Harrison Bloy, and its suppliers and manufacturers of the goods, against any failure by you, your customers, or any person in your distribution chain to properly contract out of liability to business end users under the Consumer Guarantees Act 1993.

8.3. General Indemnity: You will indemnify Harrison Bloy:

(a) for any damage, economic or other loss, or expenses (including legal expenses on solicitor-client basis) caused by your use of goods supplied by Harrison Bloy;

(b) against any claims or proceedings against Harrison Bloy to the extent caused by you or arising from your breach of the Terms of Trade; and

(c) against any claims or proceedings against Harrison Bloy arising in any way from your use of goods supplied by Harrison Bloy.

9. LIMITATION OF LIABILITY

9.1. No Warranties: To the extent permitted by law, Harrison Bloy excludes all warranties, conditions, and representations, whether express or implied, statutory or otherwise, relating in any way to the goods or services supplied under these Terms of Trade.

9.2. Exclusion of Liability: To the extent permitted by law, Harrison Bloy excludes liability, including for negligence, to you or anyone else in respect of any loss or damage (including special, indirect, or consequential loss or damage), costs and expenses suffered by you or claims made against you arising from or in connection with any use of goods supplied by Harrison Bloy to you or any other person.

9.3. Fit for Purpose: No warranty is given that goods or services supplied by Harrison Bloy will be fit for your, or your customer's, purposes.

9.4. Force Majeure: Harrison Bloy will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, inability to obtain goods or supplies including the imposition of any export or import bans, or any

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other cause beyond its reasonable control. Harrison Bloy will not be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.

- 9.5. Limited Liability:** To the extent permitted by law, Harrison Bloy's liability will be limited to the value of any defective goods or services supplied, and none of Harrison Bloy, its employees, contractors and agents, any manufacturer or developer of the goods or any of their materials or components, or any supplier of services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes costs (including costs of returning goods to Harrison Bloy or to any manufacturer), loss of data, consequential loss, loss of contracts, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. No Transfer:** Neither Harrison Bloy nor its suppliers and manufacturers of the goods transfer any right, title, or interest in any copyright, trade marks, or other intellectual property rights relating to any goods.
- 10.2. Warranty and Indemnity:** If you ask us to provide goods or services in relation to any design or drawing, you warrant that you have permission to use that design or drawing, and you indemnify Harrison Bloy against all costs and losses of any kind, including claims from third parties, which arise as a result of your failure to comply with this clause.
- 10.3. Survival:** This clause 10 will survive the termination of any agreement between the parties.

11. PERSONAL INFORMATION

- 11.1. Use:** Harrison Bloy will use any personal information that you supply for credit, administration, service, and marketing purposes. You have the right to access, and to ask for correction of, your personal information.
- 11.2. Authorisation:** You authorise any person or company to provide Harrison Bloy with any information it may require in response to your application for credit and/or other enquiries, and you authorise Harrison Bloy to search the Personal Property Securities Register for any information about you (or, in the case of a company) your parent or associated companies.
- 11.3. Unsubscribe:** You have the right to choose not to receive marketing or promotional emails, faxes, or mailers from us that do not relate to your orders or enquiries. You may make this request by emailing us at info@harrisonbloy.co.nz, with the word "unsubscribe" in the subject line.

12. DEFAULT

- 12.1. Remedies:** If you breach or fail to perform any obligation under these Terms of Trade or any other contract with Harrison Bloy, we may, without prejudice and in addition to any other rights or remedies we may have, exercise all or any of the following rights:
- (a) Delay performance of our obligations under the Terms of Trade until the matter is resolved to our satisfaction.

- (b) Suspend or cancel in whole or in part these Terms of Trade or any other contract between you and Harrison Bloy by written notice to you.
- (c) Recover from you all amounts for any damage, losses, costs, or expenses, including actual legal costs and expenses arising from your default of these Terms of Trade, including your payment obligations.
- (d) By notice to you, require that all amounts owed to Harrison Bloy whether due or not are paid immediately.

13. GENERAL

- 13.1. Amended Terms:** Harrison Bloy may from time to time change the Terms of Trade by posting or emailing to you a written set of the amended terms, to the postal address or email address held for you by Harrison Bloy. You agree that the amended terms will be effective upon posting or being emailed to you and are deemed accepted by you placing any order after the date of posting or emailing to you.
- 13.2. Credit Assessment:** You agree that you will do all acts necessary and provide to us or our insurers directly, on request, all financial information required in order to enable a credit risk assessment to be undertaken by either us or our insurers in regard to the customer.
- 13.3. Power of Attorney:** You irrevocably appoint Harrison Bloy as your attorney or the purpose of executing any documents required to enforce any right under these Terms of Trade.
- 13.4. No Assignment:** You may not assign your rights or obligations under these Terms of Trade without our prior written consent.
- 13.5. No Waiver:** If Harrison Bloy fails to enforce any terms or to exercise its rights under these Terms of Trade at any time, Harrison Bloy has not waived those rights.
- 13.6. Severability:** If any provision of the Terms of Trade is held to be invalid or unenforceable for any reason, the remaining provisions will remain in full force and effect and the parties will adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these Terms of Trade.
- 13.7. Governing Law:** These Terms of Trade are governed by the laws of New Zealand. You agree that any dispute is subject to the non-exclusive jurisdiction of the New Zealand courts although Harrison Bloy reserves the right to commence any proceedings against you in any other court.