



1. **General**
- 1.1 This Agreement for the provision of Works and/or Materials (as amended by us from time to time) are the terms and conditions on which Citywide will provide Works and/or Materials to or for the Customer (you).
- 1.2 If you sign this Agreement, or otherwise accept a Quotation given by Citywide and/or Citywide receives instructions from you to provide Works, you will be deemed to have accepted this Agreement.
- 1.3 In the event that conflict arises between this Agreement and any Quotation, this Agreement shall prevail. Any other trade arrangement, agreement, or course of dealing between the Customer and Citywide at variance with this Agreement will have no effect.
2. **Definitions**

"Agreement" means the terms contained in this document, and includes any other Quotation or invoice provided alongside this document.

"Business Day" means a day on which registered banks are open for business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays.

"Citywide" means Citywide Plumbing Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Citywide Plumbing Services Limited.

"Consents" means any local authority consent, approval or other necessary authority required for the performance of the Works.

"Customer" means the person/s ordering the Works as specified in any, Quotation, invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

"Force Majeure Event" means any event or circumstance (whether arising from natural causes, human agency, or otherwise) that is beyond Citywide's reasonable control, including strikes, lockouts or other labour disputes, riot, civil commotion, fire, flood, drought, pandemic, epidemic, loss or delay at sea, breakdown or war (whether declared or not).

"Materials" means any materials supplied by Citywide to the Customer to enable the performance of the Works.

"Overdue" means, in relation to an invoice, that payment has not been made in full within twenty (20) days following the date of the invoice.

"Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Works as agreed between Citywide and the Customer and (where applicable) may include any delivery fees associated with the provision of Materials that may be required as part of the Works.

"Quotation" means a written offer from Citywide to the Customer to perform the required Works at a Price.

"Works" means all Works and Materials supplied by Citywide to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
3. **Acceptance**
- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by this Agreement if the Customer accepts in writing a Quotation for, or accepts delivery of, any Works.
4. **Quotations**
- 4.1 Citywide will deliver to the Customer a Quotation, calculated by reference to clauses 7 and 8, at the time the Customer engages the services of Citywide. The Quotation will remain valid for 14 days.
- 4.2 Citywide reserves the right to withdraw any Quotation if:
 - (a) the Customer has not accepted the Quotation after 14 days; or
 - (b) at any time prior to commencement of the Works in accordance with clause 22.2.
- 4.3 Citywide reserves the right to vary the Price in accordance with clause 9.
- 4.4 The Customer's acceptance of the Quotation must be confirmed in accordance with clause 3 prior to the commencement of the Works.
- 4.5 The Customer acknowledges and agrees that any increase in the Quotation will be at the Customer's expense where:
 - (a) the Customer changes or adds to the requirements for the Works;
 - (b) the Customer provides plans, specifications or information which is relied upon by Citywide for the purpose of providing the Quotation, and which later proves to be inaccurate or unreliable;
 - (c) the Customer provides any product or material which proves not to be suitable or of sufficient quality or standard;
 - (d) Citywide is required to purchase any incidental Materials as are reasonably required by Citywide to perform the Works;
 - (e) conditions outside of the Citywide's control cause delays to either the commencement or completion of the Works;
 - (f) additional Works are required due to hidden or unidentifiable difficulties which are only discovered on commencement of the Works; or
 - (g) further Works are required in addition to the scope of services which was anticipated by the Quotation.
5. **Retainer**
- 5.1 Citywide may, at its discretion, require the Customer to pay a retainer of 50% of the Price set out in the Quotation prior to Citywide commencing the Work.
- 5.2 For the avoidance of doubt, where requested by Citywide, payment of the retainer by the Customer shall be a condition of, and pre-requisite to, commencement of the Works by Citywide.
6. **Price and Payment**
- 6.1 Citywide will deliver an invoice for the Price (minus any retainer paid in accordance with clause 5.1) to the Customer following completion of the Works.
- 6.2 Where performance of the Works is undertaken by Citywide over a period exceeding one calendar month, Citywide may issue monthly invoices for progress payments in respect of Works completed and costs incurred in the month to which each invoice relates.
- 6.3 Time for payment being of the essence, the Price will be payable by the Customer upon receipt of the invoice for the Works.
- 6.4 Payment may be made by electronic/on-line banking or by any other method as agreed to between the Customer and Citywide.
- 6.5 If the Customer disputes for any reason the amount owing in respect of an invoice, the Customer must set out the dispute in writing to Citywide before payment becomes Overdue. If the dispute is not resolved between Citywide and the Customer within a reasonable time, the dispute must be resolved in accordance with clause 19.
- 6.6 Where the invoice becomes Overdue, and Citywide has not been notified of any dispute, 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 Citywide nor to withhold payment of any invoice on the basis of a dispute.
- 6.7 Unless otherwise stated, the Price does not include GST. The Customer must pay GST, any other taxes and duties that may be applicable without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price.
- 6.8 In addition to the Price, the Customer shall be responsible for all costs associated with obtaining Consents in accordance with clause 11.1.
7. **Pump Service Call Out Fees**
- 7.1 Unless otherwise agreed between Citywide and the Customer, the Price for pump service call outs shall be between \$225 and \$375 plus GST for the first hour of the Citywide's performance of the Works. The applicable fee will be determined by Citywide with reference to the:
 - (A) location of the call out site; and
 - (B) Materials and/or models required for performance of the Works.
- 7.2 Citywide's rate for subsequent hours of work in respect of the services described at 7.1 shall be \$120 per hour plus GST.
8. **General Plumbing Service Call Out Fees**
- 8.1 Unless otherwise agreed between Citywide and the Customer, the Price in relation to general plumbing services shall be \$150 plus GST for the first half hour of the Citywide's performance of the Works.
- 8.2 Citywide's rate for subsequent hours of work in respect of the services described at 8.1 shall be \$100 per hour plus GST.
9. **Citywide's right to vary Price**
- 9.1 Quotations provided by Citywide to the Customer are on the basis of the costs and charges applicable at the date of the Quotation.
- 9.2 Therefore, Citywide reserves the right to change the Price where increases to Citywide in the cost of labour or Materials occur.
- 9.3 Where possible, Citywide shall notify the Customer of any variation to the Price.
10. **Default and Consequences of Default**
- 10.1 Interest on Overdue invoices shall accrue daily from the date payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Citywide's sole discretion such interest shall compound monthly at such a rate).
- 10.2 The Customer shall indemnify Citywide from and against all costs and disbursements incurred by Citywide in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Citywide's collection agency costs, and bank dishonour fees).
- 10.3 Without prejudice to any other remedies Citywide may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under this Agreement, Citywide may suspend or terminate the supply of Works to the Customer. Citywide will not be liable to the Customer for any loss or damage the Customer suffers because Citywide has exercised its rights under this clause.
- 10.4 Without prejudice to Citywide's other remedies at law, Citywide shall be entitled to cancel all or any part of any Works requested by the Customer which remain unfulfilled, and all amounts owing to Citywide shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to Citywide becomes Overdue, or in Citywide'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 Citywide;
 - (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.
11. **Performance of the Works**
- 11.1 The Customer shall be responsible for obtaining all Consents and will provide copies of such Consents to Citywide upon request. Citywide shall provide reasonable assistance to the Customer in obtaining Consents (if required) at an hourly rate of \$105 plus GST. Where any Consent is refused, the Customer will be liable for all costs incurred by Citywide up to the point of refusal and Citywide may delay performance of the Works until such time that the Consent is obtained.
- 11.2 Citywide may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in this Agreement.
- 11.3 Any time specified by Citywide for delivery of the Works is an estimate only and Citywide will not be liable for any loss or damage incurred by the Customer as a result of delivery being late.
12. **Risk**
- 12.1 If the Customer specifically requests Citywide to leave Materials outside Citywide's premises for collection, or to deliver the Materials to an unattended location, then such Materials shall always be left at the sole risk of the Customer. In the event that such Materials are lost, damaged or destroyed, replacement of the Materials shall be at the Customer's expense.
- 12.2 Where the Customer has supplied materials for Citywide to complete the Works, the Customer acknowledges that Citywide shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 12.3 The Customer acknowledges that Citywide may refuse to work with or provide installation services for any materials supplied by Customer that Citywide believes to be of insufficient standard or quality for the particular Works required, and Customer shall be liable to Citywide for the cost of any replacement materials that Citywide may need to source in order to carry out the Works requested under this Agreement.
- 12.4 The Customer acknowledges that Citywide is only responsible for Materials and/or parts of existing materials that are replaced by Citywide and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify Citywide against any loss or damage to the materials, or caused by the materials, or any part thereof howsoever arising.

- 12.5 Any advice, recommendation, information, assistance or service provided by Citywide in relation to Materials or Works supplied is given in good faith, is based on Citywide's own knowledge and experience, and shall be accepted without liability on the part of the Citywide. It shall be the responsibility of the Customer to confirm the accuracy, suitability and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.
13. **Access**
- 13.1 The Customer shall ensure that Citywide has clear and free access to the work site at the date notified by the Customer.
- 13.2 Citywide 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 Citywide.
14. **Compliance with Laws**
- 14.1 The Customer and Citywide 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.
- 14.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 14.3 The Customer agrees that they will comply with all reasonable requests for health and safety directives from Citywide, including but not limited to, informing Citywide of any hazards on the worksite to which Citywide and its agents may be exposed in performing the Works.
15. **Title**
- 15.1 Citywide and the Customer agree that ownership of the Materials shall not pass until (a) the Customer has paid Citywide all amounts owing to Citywide; and (b) the Customer has met all of its other obligations to Citywide.
- 15.2 Receipt by Citywide 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.
16. **Warranties**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 Citywide warrants that if any defect in any workmanship of Citywide becomes apparent and is reported to Citywide within 12 months of the date of delivery (time being of the essence) then Citywide will either (at Citywide's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1. are:
- (a) the warranty shall not cover any defect or damage which may be caused, partly caused, 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 Citywide; or
- (iii) any use of Materials otherwise than for any application specified by Citywide; 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; or
- (vi) any accident or Force Majeure Event.
- (b) the warranty shall cease and Citywide shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Citywide's consent.
- (c) in respect of all claims Citywide 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.
- 16.3 Warranties (if any) in relation to Materials shall be the current warranties provided by the manufacturer of the Materials. Citywide 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.
- 16.4 To the extent permitted by statute, no warranty is given by Citywide as to the quality or suitability of the Materials for any purpose, and any implied warranty is expressly excluded. Citywide shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.
17. **Consumer Guarantees Act 1993**
- 17.1 If the Customer is engaging Citywide 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 provision of Works or Materials by Citywide to the Customer.
18. **Intellectual Property**
- 18.1 Where Citywide 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 Citywide and shall only be used by the Customer at Citywide's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Citywide.
- 18.2 The Customer warrants that all designs, specifications or instructions given to Citywide will not cause Citywide to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Citywide against any action taken by a third party against Citywide in respect of any such infringement.
- 18.3 The Customer agrees that Citywide may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Citywide has created for the Customer.
19. **Dispute Resolution**
- 19.1 Each party must, to the extent possible, continue to perform its obligations under this Agreement even if there is a dispute.
- 19.2 If the parties are unable to negotiate a resolution of the dispute after the expiry of ten (10) Business Days from the date the aggrieved party gives notice to the other party in writing of the dispute, any party may refer the dispute to mediation. Failing agreement as to an appropriate mediator within three (3) Business Days, a mediator may be appointed at the request of any party by the chairperson of the New Zealand chapter of the Resolution Institute, or the nominee of such chairperson. The guidelines which will govern the mediation will be set by the parties. Failing agreement within three (3) Business Days after the date of appointment of the mediator, any party may request the mediator to set the guidelines which will govern the mediation.
- 19.3 If the dispute remains unresolved after the expiry of twenty (20) Business Days from the date of appointment of the mediator, either party may, by notice to the other party,
- require the dispute to be submitted for final determination by arbitration in accordance with clause 19.4.
- 19.4 Failing agreement as to an appropriate arbitrator within three (3) Business Days, an arbitrator may be appointed at the request of either party by the chairperson of the New Zealand chapter of the Resolution Institute, or the nominee of such chairperson. The arbitration will be conducted in accordance with the Arbitration Act 1996.
- 19.5 Where negotiation and mediation have failed, the decision of an arbitrator in accordance with clause 19.4 will be final and binding on the parties. All costs and expenses of the arbitrator will be borne equally by the parties unless the arbitrator decides otherwise.
- 19.6 Nothing in clause 19.1 to 19.5, affects any party's:
- (a) ability to commence court or other proceedings in respect of the dispute; or
- (b) right to seek urgent interlocutory and/or injunctive relief.
20. **Privacy Act 2020**
- 20.1 The Customer agrees and consents to Citywide (at their option) collecting, retaining, distributing and using information about the Customer (collected directly from the Customer and from others where authorised) for the purposes of:
- (a) assessing the Customer's creditworthiness;
- (b) performance of the Works;
- (c) sending invoices to the Customer;
- (d) recovering money owed to the Citywide;
- (e) marketing Citywide's services to the Customer, unless the Customer asks Citywide not to do so; and
- (f) exercising or enforcing any right that Citywide may have under this Agreement or at law.
- 20.2 The Customer authorises Citywide to disclose any information obtained for the purposes set out in clause 20.1, to those parties required by Citywide to carry out the Works, including sharing it with associated companies and contractors, and with marketing, credit reference and collection agencies.
- 20.3 The Customer may ask to see any information held by Citywide, and any information provided to a third party by Citywide, as long as it is readily retrievable. The Customer may ask for any information that is wrong to be corrected.
- 20.4 Citywide will not, without the Customer's prior written consent, use any information provided by Customer other than in relation to the purposes listed in clause 20.1 and 20.2.
21. **Service of Notices**
- 21.1 The Customer agrees that they will notify Citywide within 10 business days of any change of address or name of the Customer, or of any change in contact details of the principal contact of the Customer.
- 21.2 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 sending it by registered post to the last known address of the other party as stated in this contract;
- (c) if sent by email to the other party's last known email address.
- 21.3 any notice given after 5.00 pm, or on a day which is not a Business Day, shall be deemed to be given at 9.00 am on the next Business Day.
22. **Termination**
- 22.1 In respect of the Works carried out by Citywide (including work which is deemed "Construction Work" in accordance with Part 6 of the Construction Contract Act 2002), the Customer hereby expressly acknowledges that:
- (a) Citywide has the right to suspend the 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 Overdue 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 Overdue; or
- (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Citywide by a particular date; and
- (iv) Citywide has given written notice to the Customer of its intention to suspend the carrying out of the Works; or
- (v) the Customer is in breach of any obligation (including those relating to payment) under this Agreement.
- 22.2 Citywide may cancel any contract to which this Agreement applies or cancel delivery of the Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice Citywide shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Citywide for Works already performed. Citywide shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 The cancellation of orders for Materials made to the Customer's specifications, will not be accepted once production has commenced, or an order has been placed.
23. **General**
- 23.1 The failure by either party to enforce any provision of this Agreement 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 this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 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.
- 23.3 Citywide's liability under this Agreement shall be limited to damages, which under no circumstances shall exceed the Price paid by the Customer for the Works.
- 23.4 Neither party shall assign or sub-contract all or any part of their rights and obligations set out in this Agreement without the written consent of the other party. The Customer agrees that Citywide may amend this Agreement by notifying the Customer in writing at their last known email address. Unless the Customer advises otherwise, these changes shall be deemed to take effect upon receipt of the notice of such changes, or otherwise at such time as the Customer makes a further request for Citywide to provide Works to the Customer.
- 23.6 Neither party shall be liable for any default due to any Force Majeure Event.
- 23.7 Both parties warrant that they have the power to enter into the 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.