

**HYDROVAC LTD**  
Terms and Conditions of Trade

**DEFINITIONS**

1. In these terms and conditions:
  - (a) "HydroVac" means HydroVac Limited and (if applicable) its related companies, successors, assigns and authorised agents;
  - (b) "Customer" means the person, firm, company or entity purchasing services from HydroVac;
  - (c) "invoice" includes any written quotation and other contractual document issued by HydroVac;
  - (d) "services" means all services provided by HydroVac to the Customer or at the Customer's request including labour, technical information and advice; and
  - (e) "materials" means materials used in connection with provided the services.

**TERMS AND CONDITIONS PARAMOUNT**

2. Except as expressly agreed in writing these terms and conditions shall apply to and govern all contracts and other dealings between HydroVac and the Customer notwithstanding any statement to the contrary in any order or other document of the Customer.
3. No Customer order shall bind HydroVac unless accepted by HydroVac. HydroVac reserves the right to accept or decline any Customer Order.
4. The Customer shall be responsible for ensuring the accuracy of any written or verbal order, any application specifications and any service agreements. The quality and description of specification for services shall be those set out in any HydroVac quotation or service agreement (if accepted by the Customer) or the Customer's order (if accepted by HydroVac), provided that HydroVac may make changes to specifications which do not materially affect the services. Where there shall be a HydroVac quotation/service agreement and a Customer order, the terms of HydroVac's quotation/service agreement shall govern.

**PERFORMANCE OF SERVICES**

5. HydroVac will endeavour to provide services within any timeframes requested by the Customer, but time for performance of the services shall not be of the essence and HydroVac shall not be liable for any loss to the Customer caused by any delay. HydroVac reserves the right to provide services by instalments and failure by HydroVac to complete performance of the services in any one or more instalment(s) shall not entitle the Customer to cancel the contract as a whole.

**PRICE**

6. The Customer shall pay the price stated on HydroVac's invoice, save for errors which HydroVac reserves the right to correct.
7. All published prices for services and materials are indications only. In some cases estimates have been made and actual prices may vary. Prices are therefore subject to alteration without prior notice and offers are only accepted at the prices ruling at the time of performance of the services.
8. Services provided by HydroVac shall be charged on the basis of time charged at HydroVac's rates in force from time-to-time or as per the service agreement price agreed to. The Customer shall pay for all materials used and all other out-of-pocket expenses incurred by HydroVac in connection with the provision of services, including (but not limited to) equipment hireage costs, travelling expenses and disposal fees where applicable.
9. If in HydroVac's invoice there is reference to a deposit or any component of the purchase price for the service being non-refundable, then the Customer shall not be entitled to a refund of any amount so paid in the event of cancellation or termination of this contract any reason whatsoever.

**PAYMENT**

10. Unless special prior account terms have been approved by HydroVac, our payment terms are seven (7) days from date of invoice. The Customer shall pay in full all accounts and amounts owed to HydroVac by the payment date.
11. All credit card payments will incur a 4% credit card fee.
12. Time for payment shall be of the essence. In the event that payment is not received by the due date default interest may be charged by HydroVac at a rate equivalent to 2 percent per month calculated on a monthly basis on all monies outstanding for the period during which the payment has been overdue until all monies including default interest have been paid in full. All payments received applied first in payment of default interest (if any).
13. HydroVac may at its discretion apply any payments they receive from the Customer in and towards the satisfaction of any indebtedness of the Customer to HydroVac and HydroVac shall not be bound by any conditions or qualifications that the Customer may make in relation to any payment.
14. The Customer authorises HydroVac to obtain at any time from any person or entity any information that HydroVac may require for the purpose of assessing the Customer's creditworthiness and the Customer irrevocably authorises and requests all such person and entitles to releases to HydroVac any personal information held concerning the Customer. The Customer agrees that in the event of its default HydroVac may provide details of that default and personal information relating to the Customer to any credit agency so that such credit agency can maintain effective records.

**DEFAULT**

15. If the Customer fails to pay any amount owed to HydroVac by the due date, or fails to comply with any other obligation owed to HydroVac, then without prejudice to any of its other rights, remedies and powers HydroVac may (notwithstanding that HydroVac may have waived any previous default by the Customer)
  - (a) Cancel any contract and/or suspend further provision of services to the Customer
  - (b) Enter the Customer's premises or any other premises that the Customer is authorised to enter and retake possession of materials and sell them without being liable in any way to the Customer. Furthermore, the Customer shall indemnify HydroVac for all costs (including legal costs on a solicitor and own client basis), claims by third parties or whatsoever in retaking possession and selling goods.
  - (c) Appoint a receiver pursuant to the Receiverships Act 1993 in respect of the Property (including their proceeds) and any such receiver may take possession of the materials and sell them and otherwise exercise all rights and powers conferred on a receiver by law.

16. Notwithstanding any other provision of these terms and conditions, HydroVac may at any time by notice in writing suspend or terminate the Customer's credit Account or any other agreed trading terms and require immediate payment by the Customer of all amounts owed to HydroVac and HydroVac shall be entitled to exercise the powers set out in the preceding paragraphs 14(a), (b) and (c).
17. No representation, warranty or undertaking in relation to the services has been or is made or given by or on behalf of HydroVac in relation thereto as to the suitability of the service.
18. All claims for defective services must be in writing to HydroVac within seven days of the provision of the services. All claims must quote the relevant HydroVac invoice number. Any claims not made within seven days will be deemed waived by the Customer.
19. HydroVac shall have no liability in respect of any defect arising from misuse, wilful damage, negligence, failure to follow instructions, unauthorised alteration or modification, abnormal working conditions or fair wear and tear.
20. HydroVac shall have sole right to decide whether services are capable of repair and HydroVac's liability (if any) in respect of services shall be limited as follows:
  - (a) Where services are capable of repair, the payment of the cost of having the services re provided; or
  - (b) Where services cannot be re-provided, the payment of the original cost of providing the services.
21. No guarantee or warranty is given, and no obligation incurred, by HydroVac in respect of materials or components not manufactured by HydroVac, in respect of which the Customer shall only be benefit of any guarantee or warranty given to HydroVac by the manufacturer or supplier provided that HydroVac shall not be required to pay or incur any cost in relation thereto.
22. All services provided by HydroVac are provided in good faith on the basis of the information provided by the Customer. If the Customer alleges defects in HydroVac's workmanship then the Customer shall forthwith after coming aware of same notify in HydroVac in writing. Failure to so notify HydroVac in writing shall constitute a waiver by the Customer of its rights against HydroVac in respect of any such alleged defect. HydroVac shall only be liable to rectify defects in its workmanship arising during the period of seven days after completion of provision of services. HydroVac shall have no liability where any services performed or materials supplied have been re-installed, modified, not maintained or improperly maintained or improperly used. Any rectification work required to be carried out by HydroVac shall be carried out at a time stipulated by HydroVac.
23. No guarantee, warranty, representation or statement shall be binding on HydroVac unless made in writing by a director or senior officer of HydroVac. Except as expressly set forth in these terms and conditions all warranties and conditions, whether implied by law or otherwise, are excluded and HydroVac shall have no liability whatsoever to the Customer. HydroVac shall not be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) even if such loss were reasonably foreseeable or HydroVac had been advised of the possibility of the Customer incurring same. If it shall be held that HydroVac has any liability to the Customer then, except as expressly set forth in these terms and conditions, the liability of HydroVac to the Customer shall not exceed the lesser of:
  - (a) The value of the services provided or materials, the subject of any claim; or
  - (b) The contract price.
24. HydroVac shall have no liability arising from, and may correct at any time, any typographical, clerical or other error or omission in any sales literature, price list, quotation, invoice, communication or other document or information issued by it.
25. Nothing in these terms and conditions shall affect the rights of the Customer under the Consumer Guarantees Act 1993 provided that if the Customer is, or holds itself out to be, acquiring the services for the purposes of a business then the guarantees under the Consumer Guarantees Act 1993 are excluded.

#### **WAIVER**

26. These terms and conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. HydroVac shall not be deemed to have waived any term or condition unless such waiver shall be in writing and signed by a director or senior officer of HydroVac and any such waiver shall apply only to be the particular transaction to which it refers.

#### **SEVERABILITY**

27. If any clause or provision of these terms and conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgement shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.

#### **PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

28. The services shall be the collateral as that term is defined in the PPSA. The Customer grants in favour of HydroVac a charge overall services supplied by HydroVac where such services have been delivered or supplied but the Customer has not paid all moneys owed to HydroVac and over all the Customer's present and after-acquired property supplied by HydroVac, and such charge shall be a "security interest" for the purposes of the PPSA and shall secure payment of all moneys owed by the Customer to HydroVac including interest and other amounts payable under these terms and conditions and the costs of registering such security interest.
29. Where a charge granted over any services is a register-able security interest under the PPSA the following shall apply:
  - (a) The Customer irrevocably appoints HydroVac as the Customer's attorney to do anything required to register the security interest on the Personal Property Securities Register including the authority to make such inquiries and obtain such information from third parties as is necessary or desirable to register the security interest.
  - (b) The customer consents to the collection from any third party of any information necessary or desirable to register the security interest
  - (c) The Customer will provide such information and do such acts and execute such further documents as in the opinion of HydroVac may be necessary or desirable to enable HydroVac to register and perfect under the PPSA the security interest as a first priority interest or with such other priority as HydroVac may agree in writing.
30. The Customer shall not challenge in any way HydroVac's right to register the security interest.
31. The Customer shall not seek to obtain or register a discharge of the security interest without the prior written consent of HydroVac.

32. The Customer agrees that sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129 and 131 to 133 of the PPSA shall not apply to these terms and conditions or the security created hereunder.
33. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.
34. The Customer must not change its name without first notifying HydroVac of the new name not less than seven days before the change takes effect.
35. The Customer must not allow or permit the creation of a lien over any goods prior to the payment in full to HydroVac of all moneys owed by the Customer to HydroVac.
36. The Customer will upon demand pay all HydroVac's expenses and legal costs (on a solicitor and own client basis) in connection with the registration of a financing statement or financing change statement relating to the security interest created by these terms and conditions or of obtaining an order under section 167 of the PPSA.
37. If all moneys owed by the Customer have been paid to HydroVac in full, including all moneys payable under these terms and conditions, HydroVac shall at the request of the Customer and at the Customer's cost, register a discharge of the security interest.

#### **OCCUPATIONAL HEALTH AND SAFETY**

38. The Customer is obliged to ensure:
  - (a) That all work sites comply with Occupational Health and Safety Statutory Requirements, Regulations and Standards
  - (b) That there is always proper means of access to the work site.

#### **GOVERNING LAW**

39. The contract shall be governed by the law of NZ and the parties subject to the non-exclusive jurisdiction of the Courts of NZ.