

Hydro Vision Limited T/A Hydro Vision – Terms & Conditions of Trade

1.	Definitions	Customer's agent and is based on HVL's own knowledge and experience and shall be accepted without liability on the part of HVL. Where such advice or recommendations are not acted upon then HVL shall provide the Customer or their agent to authorise commencement of the Services in writing. HVL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.	16.4	Without prejudice to HVL's other remedies at law HVL shall be entitled to cancel all or any part of any order of the Customer which remains unfilled and all amounts owing to HVL shall, whether or not due for payment, become immediately payable if:
1.1	"Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.		(a)	any money payable to HVL becomes overdue, or in HVL's opinion the Customer may be unable to make a payment when it falls due;
1.2	"Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using HVL's website, then the Customer shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.	7.2	(b)	the Customer has exceeded any applicable credit limit provided by HVL;
1.3	"Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting HVL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:	7.3	(c)	the Customer becomes insolvent, 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
	(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and	7.4	(d)	the Customer is a company or other legal entity that is in breach of its obligations under the contract.
	(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and	7.5		
	(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and	7.6		
	(d) if the Customer's executors, administrators, successors and permitted assigns.	7.7		
1.4	"HVL" means Hydro Vision Limited T/A Hydro Vision, its successors and assigns.	7.8		
1.5	"Price" means the Price payable (plus any Goods and Services Tax ("GST") and applicable for the Services as agreed between HVL and the Customer in accordance with clause 5 of this Contract.	7.9		
1.6	"Services" means all Services supplied by HVL to the Customer at the Customer's request from time to time.	8.		
2.	Acceptance	8.1		
2.1	The parties acknowledge and agree that:	8.2		
	(a) they have read and understood the terms and conditions contained in this Contract; and	8.3		
	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by HVL.	8.4		
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.	9.		
2.3	Any amendment to the terms and conditions contained in this Contract may only be made in writing by the consent of both parties.	9.1		
2.4	The Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with HVL and it has been approved with a credit limit established for the account. In the event that the supply of Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, HVL reserves the right to refuse delivery.	9.2		
2.5	In the event that HVL is required to provide the Services urgently, that may require HVL's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then HVL reserves the right to charge the Customer a minimum Call-Out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any materials used to undertake the Services unless otherwise agreed between HVL and the Customer.	9.3		
2.6	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017, or any other applicable provisions of that Act or any Regulations referred to in that Act.	9.4		
3.	Errors and Omissions	9.5		
3.1	The Customer acknowledges and accepts that HVL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):	9.6		
	(a) resulting from an inadvertent mistake made by HVL in the form and/or administration of this Contract; and	9.7		
	(b) contained in/informed from any literature (hard copy and/or electronic) supplied by HVL in respect of the Services.	9.8		
3.2	In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of HVL, the Customer:	9.9		
	(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; and	9.10		
	(b) shall not be responsible for any additional costs incurred by HVL arising from the error or omission.	9.11		
4.	Change in Control	9.12		
4.1	The Customer shall give HVL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, change of trustees, or business practice). The Customer shall be deemed to have accepted by HVL as a result of the Customer's failure to comply with this clause.	10.		
5.	Price and Payment	10.1		
5.1	At HVL's sole discretion, the Price shall be either:	10.2		
	(a) as indicated on any invoice provided by HVL to the Customer; or	10.3		
	(b) the Price as at the date of delivery of the Services according to HVL's current price list; or	10.4		
	(c) HVL's quoted Price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.	10.5		
5.2	HVL reserves the right to change the Price:	10.6		
	(a) if a variation to the Services originally scheduled is requested; or	10.7		
	(b) where additional Services are required due to the discovery of hidden or unidentified, but not limited to, difficulties including, but not limited to, poor weather conditions, limitations to the site access, obscured site defects/obstructions that require additional Services, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Customer etc.) which are only discovered on commencement of the Services; or	10.8		
	(c) in the event of increases to HVL in the cost of labour or materials which are beyond HVL's control.	10.9		
5.3	Variations will be charged for on the basis of HVL's quotation, and will be detailed in writing, and shown as variations on HVL's invoice. The Customer shall be required to respond to any variation submitted by HVL within ten (10) working days. Failure to do so will entitle HVL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.	10.10		
5.4	At HVL's sole discretion, a reasonable non-refundable deposit may be required.	10.11		
5.5	Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by HVL, which may be:	10.12		
	(a) on completion of the Services;	10.13		
	(b) by way of instalments/progress payments in accordance with HVL's payment schedule;	10.14		
	(c) payment for approved Customers shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;	11.		
	(d) the date specified on any invoice or other form as being the date for payment; or	11.1		
	(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by HVL.	11.2		
5.6	Payment may be made by electronic/in bank banking or by any other method as agreed between the Customer and HVL.	11.3		
5.7	HVL may in its discretion allocate any payment received from the Customer towards any invoice that HVL determines and may do so at the time of receipt or at any time afterwards.	11.4		
5.8	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 HVL nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of that invoice is in dispute, then the Customer must notify HVL in writing within three (3) business days of the invoice shall remain due and payable for the full amount, until such time as HVL investigates the dispute claim, credit shall be passed for refund until the review is completed. Failure to make payment may result in HVL placing the Customer's account into default and subject to default interest in accordance with clause 16.1.	11.5		
5.9	Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to HVL an amount equal to any GST HVL must pay for any supply by HVL under this or any other agreement for providing HVL's Services. The Customer must pay GST without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	11.6		
5.10	The Customer acknowledges and agrees that the Customer's obligations to HVL for the provision of Services shall not cease until:	11.7		
	(a) the Customer has paid HVL all amounts owing for the particular Services; and	11.8		
	(b) the Customer has met all other obligations due by the Customer to HVL in respect of all Contracts between HVL and the Customer.	11.9		
5.11	Receipt by HVL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been received, cleared or recorded in full and until then HVL's ownership or rights in respect of the Services, and this Contract, shall continue.	11.10		
6.	Provision of the Services	11.11		
6.1	Subject to clause 6.2 it is HVL's responsibility to ensure that the Services start as soon as it is reasonably practicable.	11.12		
6.2	The Services' commencement date will be extended, and the completion date extended by whatever time is reasonable in the event that HVL claims an extension of time (by giving the Customer written notice of the extension) or by an event beyond HVL's control, including but not limited to any failure by the Customer to:	11.13		
	(a) make a selection; or	11.14		
	(b) have the site ready for the Services; or	11.15		
	(c) notify HVL that the site is ready.	11.16		
6.3	Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.	11.17		
6.4	HVL may deliver the Services to the Customer by each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.	11.18		
6.5	Any time specified by HVL for delivery of the Services is an estimate only and HVL will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that HVL is unable to supply the Services as agreed, or due to any action or inaction of the Customer, HVL shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.	11.19		
7.	Risk	11.20		
7.1	Any advice, recommendation, information, assistance or service provided by HVL in relation to the Services supplied is given in good faith to the Customer, or the	11.21		
	Customer's agent and is based on HVL's own knowledge and experience and shall be accepted without liability on the part of HVL. Where such advice or recommendations are not acted upon then HVL shall provide the Customer or their agent to authorise commencement of the Services in writing. HVL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.	11.22		
	HVL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, HVL accepts no responsibility for any losses, damages, or costs however resulting from these inaccurate plans, specifications or other information.	11.23		
	The Customer acknowledges and agrees that it is their responsibility to report any existing damage to HVL prior to the commencement of the Services. HVL cannot be held responsible for any existing damage, wear and tear or stains that cannot be removed using HVL's cleaning methods.	11.24		
	HVL's Services may at times include the use of corrosive products which may have a detrimental effect on certain exposed surfaces (including, but not limited to, surfaces containing zinc etc.) Where such surfaces are in close proximity to the areas to be serviced, HVL requires written notification of such. In addition, it is required that the Customer will provide visual clarification to HVL on the location of such surfaces prior to commencement of the Services. HVL will accept no liability for damage if no such notification is received.	11.25		
	HVL cannot guarantee that existing stains will be removed by the preparation process.	11.26		
	HVL gives no guarantee (expressed or implied) that may occur naturally in the services such as:	11.27		
	(a) hairline cracking in between bricks; or	11.28		
	(b) damage caused by contact with chemicals, solvents, oils or any other substances.	11.29		
	HVL will endeavour to remove any existing staining and/or marks, however HVL does not offer any guarantee, and shall take no liability, in the event staining and/or marks are not completely removed.	11.30		
	The Customer acknowledges and accepts that choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, HVL cannot give any guarantee against recurrence or further damage.	11.31		
	In the event that the Customer elects to use CCTV camera or an electric eye, and HVL does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, HVL may require the Customer or their agent to authorise all work in writing. In the event that the Customer does not authorise such work, subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.	11.32		
	Customer Responsibilities	11.33		
	Prior to HVL commencing any work the Customer must advise HVL of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer side drains, water services, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. Whilst HVL will take all care to avoid damage to any underground services the Customer agrees to indemnify HVL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.	11.34		
	It is the intention of HVL and agreed by the Customer that:	11.35		
	(a) the Customer shall ensure that HVL has clear and easy access to the site at all times to enable them to undertake the Services. HVL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of HVL; and	11.36		
	(b) it is the Customer's responsibility to provide HVL while at the site, with adequate access to available water, electricity and any other amenities that may be required.	11.37		
	Where HVL requires that materials, tools etc. required for the Services be stored at the site, the Customer shall supply HVL a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.	11.38		
	Personal Property Securities Act 1999 ("PPSA")	11.39		
	In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.	11.40		
	By assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has any kind of a security interest, in favour of HVL, to the extent of the Customer's interest in the property for the purposes of securing repayment of all monetary obligations of the Customer to HVL for Services – that have previously been provided and that will be provided in the future by HVL to the Customer.	11.41		
	The Customer understands and agrees that:	11.42		
	(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HVL may reasonably require to register a financing statement or financing charge on the Personal Property Securities Register;	11.43		
	(b) indemnify, and upon demand reimburse, HVL for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Services charged thereby;	11.44		
	(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Services or the proceeds of such Services in favour of a third party without the prior written consent of HVL;	11.45		
	Unless otherwise agreed to in writing by HVL, the Customer agrees to give HVL the right to receive a verification statement in accordance with section 148 of the PPSA.	11.46		
	The Customer shall unconditionally ratify any actions taken by HVL under clauses 11.40 to 11.44.	11.47		
	Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contravening out of any of the provisions of the PPSA.	11.48		
	Security and Charge	11.49		
	In consideration of HVL agreeing to supply Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest right, interest in power to grant a security property to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to section 203 of the Personal Property Securities Act 1999.	11.50		
	The Customer indemnifies HVL from and against all HVL's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising HVL's rights under this clause.	11.51		
	The Customer irrevocably appoints HVL and each director of HVL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10, including, but not limited to, signing any document on the Customer's behalf.	11.52		
	Compliance with Laws	11.53		
	HVL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.	11.54		
	Defective Services	11.55		
	The Customer shall inspect the Services on delivery and shall within seven (7) days of delivery notify HVL of any alleged defect, shortage in quantity, errors, omissions or omissions in the description of the Services or any other purpose. The Customer has an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the description and quantity of the Services ordered. For defective Services, which HVL has agreed in writing that the Customer is entitled to reject, HVL's liability is limited to either (at HVL's discretion) replacing the Services or rectifying the Services provided that the Customer has complied with the provisions of clause 12.	11.56		
	Consumer Guarantees Act 1993 and the Fair Trading Act 1986	11.57		
	If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Services by HVL to the Customer.	11.58		
	HVL agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").	11.59		
	Intellectual Property	11.60		
	The Customer agrees that HVL may (at no cost) use for the purposes of marketing or social media, any photographs of the Services which HVL has supplied to the Customer.	11.61		
	Use of Reports	11.62		
	Any reports that HVL gives to the Customer, its employees or agents is for the Customer's exclusive use and must be used only for the purpose described in the scope of Services.	11.63		
	Unless HVL gives the Customer prior written consent, the reports:	11.64		
	(a) must not be used or disclosed in any way other than that referred to in the scope of Services;	11.65		
	(b) must not be made available to any other person, except the Customer's lawyers or other professional advisor assisting in the Services; and	11.66		
	(c) must not be relied upon by any other party other than the Customer.	11.67		
	HVL is not responsible for any loss or damage suffered by the Customer, who is provided with or obtains a copy of HVL's report.	11.68		
	The Customer acknowledges and accepts that the signed copy of HVL's final report is the definitive version.	11.69		
	HVL shall not be liable for any loss or damages or third-party claims in the event that the Customer fails to adhere to this clause.	11.70		
	Default and Consequences of Default	11.71		
	Interest on overdue invoices shall accrue daily from the date when payment becomes due, under a simple interest at a rate of two and a half percent (2.5%) per calendar month (and at HVL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	11.72		
	If the Customer owes HVL any money the Customer shall indemnify HVL from and against all HVL's costs and disbursements incurred by HVL in recovering that debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HVL's collection agency costs, and bank disbursement fees).	11.73		
	Further to any other rights or remedies HVL may have under this Contract, if a Customer has made payment to HVL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HVL under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.	11.74		
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