

1. Definitions

- 1.1 “Hydroscape” shall mean Hydroscape Limited, its successors and assigns or any person acting on behalf of and with the authority of Hydroscape Limited.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Hydroscape to the Customer.
- 1.3 “Guarantor” shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Products” shall mean all Products supplied by Hydroscape to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Products described on any invoices, quotation, work authorisation or any other forms as provided by Hydroscape to the Customer.
- 1.5 “Services” shall mean all services supplied by Hydroscape to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Products as defined above).
- 1.6 “Price” shall mean the price payable for the Products as agreed between Hydroscape and the Customer in accordance with clause 4 of this contract.

2. Consumer Guarantees Act 1993

- 2.1 If the Customer is acquiring Products 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 supply of Products by Hydroscape to the Customer.

3. Acceptance

- 3.1 Any instructions received by Hydroscape from the Customer for the supply of Products and/or the Customer's acceptance of Products supplied by Hydroscape shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Hydroscape.
- 3.4 The Customer shall give Hydroscape not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Hydroscape as a result of the Customer's failure to comply with this clause.
- 3.5 Products are supplied by Hydroscape only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At Hydroscape' sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Hydroscape to the Customer in respect of Products supplied; or
 - (b) Hydroscape' Price at the date of delivery of the Products according to Hydroscape' current Price list; or
 - (c) Hydroscape' quoted Price (subject to clause 4.2) which shall be binding upon Hydroscape provided that the Customer shall accept Hydroscape' quotation in writing within thirty (30) days.
- 4.2 Hydroscape reserves the right to change the Price in the event of a variation to Hydroscape' quotation. Any variation from the plan of scheduled Services or specifications of the Products (including, but not limited to, any variation as a result of additional Services required due to unforeseeable problems with the site, which are only revealed when installing the Products, or as a result of increases to Hydroscape in the cost of Products and labour) will be charged for on the basis of Hydroscape' quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At Hydroscape' sole discretion:
 - (a) a non-refundable deposit may be required; and/or
 - (b) payment shall be due on installation of the Products; or
 - (c) detailed progress payment claims shall be made by Hydroscape either:
 - (i) in accordance with the specified payment schedule; or
 - (ii) at intervals not less than monthly for work performed up to the end of each month; and such payment claims may include the reasonable value of authorised variations and the value of any Products delivered to the site but not yet installed.
 - (d) 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.
- 4.4 Time for payment for the Products shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and Hydroscape.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery and Installation

- 5.1 At Hydroscape' sole discretion delivery of the Products shall take place when:
(a) the Customer takes possession of the Products at Hydroscape' address; or
(b) the Customer takes possession of the Products at the Customer's nominated address (in the event that the Products are delivered by Hydroscape or Hydroscape' nominated carrier).
- 5.2 At Hydroscape' sole discretion the costs of delivery are:
(a) included in the Price; or
(b) in addition to the Price and, where applicable, charged to the Customer's account.
- 5.3 Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.4 The Customer shall provide clear and reasonable access to the premises on the date of agreed installation. Delays to Hydroscape waiting for access and/or clearing of obstacles, or other delays caused by the Customer (or any agent of the Customer), may result in additional charges added to the Price.
- 5.5 The failure of Hydroscape to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Hydroscape shall not be liable for any loss or damage whatsoever due to failure by Hydroscape to deliver the Products (or any of them) promptly or at all, where due to circumstances beyond the control of Hydroscape.

6. Risk

- 6.1 If Hydroscape retains ownership of the Products nonetheless, all risk for the Products passes to the Customer on delivery.
- 6.2 The Customer accepts that electronic security systems, smoke, heat and similar detectors installed to / at the premises:
(a) are for monitoring and detection purposes and should not be seen as a life saving device; and
(b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
- 6.3 It shall be the Customer's responsibility:
(a) to ensure the Products are maintained to full operational condition (and regularly tested if required); and
(b) to ensure all electronically protected areas are free from obstacles which may impair the operation of the Products.

7. Title

- 7.1 Hydroscape and Customer agree that ownership of the Products shall not pass until:
(a) the Customer has paid Hydroscape all amounts owing for the particular Products; and
(b) the Customer has met all other obligations due by the Customer to Hydroscape in respect of all contracts between Hydroscape and the Customer.
- 7.2 Receipt by Hydroscape 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 and until then Hydroscape' ownership or rights in respect of the Products shall continue.
- 7.3 It is further agreed that:
(a) where practicable the Products shall be kept separate and identifiable until Hydroscape shall have received payment and all other obligations of the Customer are met; and
(b) until such time as ownership of the Products shall pass from Hydroscape to the Customer Hydroscape may give notice in writing to the Customer to return the Products or any of them to Hydroscape. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Products shall cease; and
(c) the Customer is only a bailee of the Products and until such time as Hydroscape has received payment in full for the Products then the Customer shall hold any proceeds from the sale or disposal of the Products, up to and including the amount the Customer owes to Hydroscape for the Products, on trust for Hydroscape; and
(d) until such time that ownership in the Products passes to the Customer, if the Products are converted into other products, the parties agree that Hydroscape will be the owner of the end products; and
(e) if the Customer fails to return the Products to Hydroscape then Hydroscape or Hydroscape' agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Products are situated and take possession of the Products, and Hydroscape will not be liable for any reasonable loss or damage suffered as a result of any action by Hydroscape under this clause.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
(b) a security interest is taken in all Products previously supplied by Hydroscape to the Customer (if any) and all Products that will be supplied in the future by Hydroscape to the Customer.
- 8.2 The Customer undertakes to:
(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 Hydroscape may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, Hydroscape for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
(c) not register a financing change statement or a change demand without the prior written consent of Hydroscape; and

- (d) immediately advise Hydroscape of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 8.3 Hydroscape and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by Hydroscape, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Customer shall unconditionally ratify any actions taken by Hydroscape under clauses 8.1 to 8.5.

9. Defects

- 9.1 The Customer shall inspect the Products on delivery and shall within seven (7) days of delivery (time being of the essence) notify Hydroscape of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Hydroscape an opportunity to inspect the Products within a reasonable time following delivery if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which Hydroscape has agreed in writing that the Customer is entitled to reject, Hydroscape's liability is limited to either (at Hydroscape's discretion) replacing the Products or repairing the Products.

10. Returns

- 10.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
 - (b) Hydroscape has agreed in writing to accept the return of the Products; and
 - (c) the Products are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) Hydroscape will not be liable for Products which have not been stored or used in a proper manner; and
 - (e) the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 Hydroscape will not accept the return of Products for credit.

11. Warranty

- 11.1 Subject to the conditions of warranty set out in clause 11.2 Hydroscape warrants that if any defect in any workmanship of Hydroscape becomes apparent and is reported to Hydroscape within twelve (12) months of the date of delivery (time being of the essence) then Hydroscape will either (at Hydroscape's sole discretion) replace or remedy the workmanship.
- 11.2 The conditions applicable to the warranty given by clause 11.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Products; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Hydroscape; or
 - (iii) any use of any Products otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Hydroscape shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Hydroscape's consent.
 - (c) in respect of all claims Hydroscape 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.
- 11.3 For Products not manufactured by Hydroscape, the warranty shall be the current warranty provided by the manufacturer of the Products. Hydroscape 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 Products.
- 11.4 In the case of second hand Products, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Hydroscape as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Hydroscape shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising.

12. Intellectual Property

- 12.1 Where Hydroscape has designed, drawn or written Products for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Hydroscape, and shall only be used by the Customer at Hydroscape's discretion.
- 12.2 The Customer warrants that all designs or instructions to Hydroscape will not cause Hydroscape to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Hydroscape against any action taken by a third party against Hydroscape in respect of any such infringement.
- 12.3 The Customer hereby authorises Hydroscape to utilise images of the Products designed or supplied by Hydroscape in advertising, marketing, or competition material by Hydroscape.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Hydroscape' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Hydroscape.
- 13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Hydroscape from and against all costs and disbursements incurred by Hydroscape in pursuing the debt including legal costs on a solicitor and own client basis and Hydroscape' collection agency costs.
- 13.4 Without prejudice to any other remedies Hydroscape may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Hydroscape may suspend or terminate the supply of Products to the Customer and any of its other obligations under the terms and conditions. Hydroscape will not be liable to the Customer for any loss or damage the Customer suffers because Hydroscape has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Hydroscape' other remedies at law Hydroscape shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Hydroscape shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Hydroscape becomes overdue, or in Hydroscape' opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Security and Charge

- 14.1 Despite anything to the contrary contained herein or any other rights which Hydroscape may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Hydroscape or Hydroscape' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Hydroscape (or Hydroscape' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Hydroscape elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Hydroscape from and against all Hydroscape' costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Hydroscape or Hydroscape' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Cancellation

- 15.1 Hydroscape may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Customer. On giving such notice Hydroscape shall repay to the Customer any sums paid in respect of the Price. Hydroscape shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of the Products the Customer shall be liable for any loss incurred by Hydroscape (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 Cancellation of orders for Products made to the Customer's specifications or non-stocklist items will definitely not be accepted, once th order has been processed.

16. Privacy Act 1993

- 16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Hydroscape to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
 - (b) disclose information about the Customer and/or Guarantors, whether collected by Hydroscape from the Customer and/or Guarantors directly or obtained by Hydroscape from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
- 16.2 Where the Customer and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.

16.3 The Customer and/or Guarantors shall have the right to request Hydroscape for a copy of the information about the Customer and/or Guarantors retained by Hydroscape and the right to request Hydroscape to correct any incorrect information about the Customer and/or Guarantors held by Hydroscape.

17. Unpaid Hydroscape' Rights

17.1 Where the Customer has left any item with Hydroscape for repair, modification, exchange or for Hydroscape to perform any other Service in relation to the item and Hydroscape has not received or been tendered the whole of the Price, or the payment has been dishonoured, Hydroscape shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while Hydroscape is in possession of the item;
- (c) a right to sell the item.

17.2 The lien of Hydroscape shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

18. Construction Contracts Act 2002

18.1 The Customer hereby expressly acknowledges that:

- (a) Hydroscape has the right to suspend 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 not paid in full by the due date for payment 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 not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Hydroscape by a particular date; and
 - (iv) Hydroscape has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Hydroscape suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if Hydroscape exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Hydroscape under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Hydroscape suspending work under this provision.

19. Customer's Disclaimer

19.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Hydroscape or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Hydroscape and the Customer acknowledges that the Products are bought relying solely upon the Customer's skill and judgment.

20. General

20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 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.

20.3 Hydroscape shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Hydroscape of these terms and conditions.

20.4 In the event of any breach of this contract by Hydroscape the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Products.

20.5 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 Hydroscape nor to withhold payment of any invoice because part of that invoice is in dispute.

20.6 Hydroscape may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.7 Hydroscape reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Hydroscape notifies the Customer of such change.

20.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

20.10 The failure by Hydroscape to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Hydroscape's right to subsequently enforce that provision.