

# SKYHIGH VACUUM SERVICES LIMITED STANDARD TERMS AND CONDITIONS OF TRADE

## 1. Defined Terms

**"Services"** means all services supplied from time to time by us which Services shall be described on the invoices, quotation, work authorisation or any other work commencement forms provided by us to you which shall include but not limited to specialist high reach gutter cleaning services for both commercial and residential locations having a 12 metre height ability using a portable powerful self-contained vacuum system.

**Skyhigh Vacuum Services Limited** ("The Company", "our", "us" etc)

**"PPSA"** means the Personal Property Securities Act 1999 (as amended or substituted from time to time).

Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA

## 2. Terms of contract

Any services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept services from us, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.

## 3. Price

3.1 The price for services will be as quoted to you in writing based upon a laser measurement of lineal lengths of each gutter, at our standard charges applying at the time. Unless otherwise agreed in writing any quoted price may be altered prior to provision of services to you, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 28 days after it is given. All prices and charges are GST exclusive.

3.2 Any variation from the plan of scheduled services or specification, will be charged for on the basis of the quotation and will be shown as extras on the invoice. Payment of all extras must be made in full at the time of their completion.

## 4. Payment

4.1 In respect of residential customers repayment for services shall be of the essence and by way of mobile BNZ Payclip for processing prepayment either remotely or on site.

4.2 Prepayment for the services is a prerequisite of services and without prejudice to any other remedies available to us:

- we may cancel or withhold supply of services;
- interest on monies overdue shall be charged on a daily basis and be calculated at the rate of 15% per annum during such default, and interest shall continue to accrue both before and after judgment; and
- you shall be responsible for all costs incurred by us in recovering such monies.

4.3 Before supplying you with services, we require payment in advance.

## 5. Compliance with Acts and Regulations

5.1 Where you grant access to us over your property for the purposes of our providing services to you, you shall ensure compliance with all legislation and regulations in relation to the property, including ensuring the property is in a safe state for us to undertake any necessary work and that there is at least a one metre clearance around the building to enable access for our machine.

5.2 If we have any concerns regarding the safety of our employees, in relation to the access and use of your property, we shall be entitled to halt all services until such time as our safety concerns have been resolved. In that case you shall be responsible for payment of services undertaken by us to that point which shall include travel time costs of \$1.50 plus GST per kilometre from Clevedon base area code 2248.

5.3 You may have contacted your Lines Company to have electricity disconnected to your property prior to the gutter clean. We will need to be advised of the disconnection day and time in advance and have agreed to that time frame.

Legally we are unable to work within 4 metres of any live power lines (refer to NZECP 34:2001). Our Health and Safety Policy requires that we physically meet the representative from that Power Lines Company on site at the agreed time of disconnection **before we can start cleaning**.

We may have to request that the clean be rescheduled should the Power Lines Company not complete disconnection at the agreed time with us in attendance or for any other unforeseen reason, we are not able to be on site at time of disconnection. Travelling time charges of \$1.50 plus GST per km from Clevedon Base Area Code 2248 will be applicable should the Power Lines company not be onsite at this agreed time to complete disconnection. Waiting time charges of \$120 plus GST per hour or part thereof will also be applicable if we are onsite and have to wait for the disconnection to be completed.

## 6. Warranties

6.1 Except to the extent of written warranties given by us to you, all warranties and representations including those expressed or implied by law, in respect of services supplied are excluded to the extent permitted by law.

6.2 We shall not be liable:

- where you have altered or modified the Services, mis-applied the Services, or have subjected them to any unusual or non-recommended use,
- for loss caused by any factors beyond our control;
- for any indirect or consequential loss of any kind;
- any damage to gutters, downpipes of fascia where the condition of the property is in poor condition prior to commencement of the services thereby rendering the property susceptible to damage by use of the vacuum system.

6.3 Our total liability under any warranty for defective Services supplied by us is limited to our option to either:

- replacing the services; or
- refunding the price of the Services;

6.4 Under no circumstances shall our liability exceed the cost of the Services.

6.5 Defects:-

We will provide you with an email of 'before' and 'after' cleaning photos from our Bluetooth camera. You shall within 30 days of delivery notify us of any alleged defect, or failure to comply with the description or quote. You shall afford us an opportunity to review the Services within a reasonable time following completion. If you fail to comply with these provisions the Service/Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect.

## 7. General Terms

7.1 Mediation:-

If a dispute arises, we may agree to settle the dispute by mediation before resorting to litigation or arbitration.

7.2 Cancellation by you:-

You may not cancel any order for services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid and charge you for any costs incurred to date.

7.3 Cancellation by us:-

We shall be entitled without liability to you to cancel an order or delivery of an order if:

- you become insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution;
- you or we are refused any licences, consents or permits in respect of the services;
- An extraordinary event occurring or a material change affecting the affairs or the financial condition of the customer, which gives the company reasonable grounds to conclude that the customer may not, or may be unable to, perform or observe its obligations under the contract; or
- you breach any term of these Terms.

7.4 Waiver or variation:-

Waiver or variation of these Terms by us will only be effective if given in writing by an authorised member of our staff.

7.5 Severability:-

Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

7.6 Governing law:-

The Contract and these Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

7.7 The Privacy Act:-

You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by us, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties including our related companies and shareholders. You understand that you have a right of access and may request correction of personal information held by us about you.

7.8 Consumer Guarantees Act (CGA):-

If the CGA applies, these terms and conditions shall be read subject to your rights under the CGA, provided that where you are acquiring services or services for business purposes the CGA shall not apply.

## 8. PPSA 1999 and as amended

8.1 Security:-

You acknowledge and agree that:-

- by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 5 of these Terms) to us in all Services supplied by us to you (if any) and all after acquired Services supplied by us to you; and
- these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.

8.2 Financing Statement:-

You undertake to:-

- sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- not register a financing change statement or a change demand in respect of the Services (as those terms are defined in the PPSA) without our prior written consent; and
- give us not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).

8.3 Waiver:-

You waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security risk.

8.4 Contracting Out

- You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.

- (b) To the maximum extent permitted by law you waive your rights and contract out of your rights under the sections referred to in section 107(2)(c) to (e) and (g) to (i) of the PPSA.

**9. Notices**

Any notice to be given to the customer shall be deemed to be given 48 hours after it being posted by ordinary post or immediately if sent by email, fax or telegram to the physical address, email address or appropriate facsimile number of the customer set out in the contract or to the customer's registered office or to the customer's last known address.

**10. Health and Safety**

The customer shall be responsible to ensure that applicable health and safety regulations are observed and other appropriate steps taken in relation to the implementation of the services and the health and safety of the Company's staff working on the customer's premises. The customer shall ensure that there is no risk to our staff as a consequence of a dog or dogs on the property and holds harmless and indemnified the company against any Health and Safety consequences that may arise from a dog or dogs on the property.

**11. Force majeure**

The Company shall not be liable to the customer for any defect loss, damage or delay caused by strike, lockout, traffic delays, damage to or breakdown of plant government interference, war, act of war, storm, tempest or other adverse weather conditions, fire, flood, riot, explosion, earthquake force majeure or any other cause beyond the reasonable control of the company.

**12. Amendments**

We reserve the right to change these terms and conditions of sale at any time and any amendments will be displayed on our website.

**13. Compliance with laws**

The Company will comply with all legislation, codes and standards specified in the Contract and the Company is under no liability as a failure to meet any other legislation, codes or standard. If, after the Contract date, there are any changes in any legislation, regulations or standards with which the company must comply, then the Customer agrees to reimburse or pay to the company an amount equal to additional cost incurred by the Company relating to such compliance.

**14. Subcontracting**

The company reserves the right to subcontract the performance of this contract or any part thereof to any other party or person it may determine.

**15. Non-Assignment**

The customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the contract to any other person whatsoever.