

Harris Pumps & Filtration Limited – Terms & Conditions of Trade

- 1.1 **Definitions**
1.1 "HPF" means Harris Pumps & Filtration Limited, its successors or assigns or any person acting on behalf of and with the authority of Harris Pumps & Filtration Limited.
- 1.2 "Customer" means the person(s) ordering the Services (and/or hiring Loan Equipment) as specified in any invoice, document or order, and, if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Services" means all Services or Products supplied by HPF to the Customer at the Customer's request from time to time (where the context so permits the terms "Services" or "Products" shall be interchangeable for the other).
- 1.4 "Loan Equipment" means all Loan Equipment including any accessories supplied on loan by HPF to the Customer (and where the context so permits shall include any supply of Services). The Loan Equipment shall be as described on the invoices, quotation, or any other work authorization form provided by HPF to the Customer.
- 1.5 "Price" means the Price payable for the Services as agreed between HPF and the Customer in accordance with clause 4 below.
- 2.1 **Acceptance**
2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Services and conditions if the Customer places an order for or accepts delivery of any Services.
- 2.2 These terms and conditions may only be amended with HPF's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and HPF.
- 2.3 None of HPF's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of HPF in writing nor is HPF bound by any such unauthorised statements.
- 2.4 These terms and conditions are to be read in conjunction with the Terms and Conditions posted on HPF's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.5 The Customer acknowledges and agrees that in the event that the Customer requests HPF to make a Call-Out to carry out Services, then HPF reserves the right to charge a minimum Call-Out Fee of one hour being HPF hourly labour rate (penalty rates may apply for weekends and/or Public Holidays, unless otherwise agreed between HPF and the Customer), plus travel and parts.
- 3.1 **Change in Control**
3.1 The Customer shall give HPF 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, or business practice). The Customer shall be liable for any loss incurred by HPF as a result of the Customer's failure to comply with this clause.
- 4.1 **Price and Payment**
4.1 At HPF's sole discretion the Price shall be either:
(a) as indicated on invoices provided by HPF to the Customer in respect of Services performed or Products/Loan Equipment supplied; or
(b) HPF's Price at the date of delivery of the Services according to HPF's current price list; or
(c) HPF's quoted Price (subject to clause 4.2) which shall be binding upon HPF provided that the Customer shall accept HPF's quotation in writing within thirty (30) days.
4.2 HPF reserves the right to change the Price:
(a) if a variation to the Products/Loan Equipment which are to be supplied is requested; or
(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, unforeseen circumstances such as a lack of or restricted access to the site, or hidden pipes etc) which are only discovered on commencement of the Services; or
(d) in the event of increases to HPF in the cost of labour or Products/Loan Equipment which are beyond the Customer's control; or
(e) if HPF's sole discretion a non-refundable deposit may be required.
4.3 At HPF's sole discretion a non-refundable deposit may be required.
4.4 Time for payment for the Products/Loan Equipment/Loan Equipment (all Loan Equipment *where applicable*) shall be subject to a minimal rental charge during the course of the Services) being of the essence, the Price will be payable by the Customer on the date/s determined by HPF, which may be:
(a) on completion of the Services; or
(b) by way of progress payments in accordance with HPF's specified progress payment schedule. Such progress payment plans may include the reasonable value of authorised variations and the value of any Products/Loan Equipment delivered to the worksite but not yet installed;
(c) for certain approved Customers, 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;
(d) the date specified on any invoice or other form as being the date for payment; or
(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 HPF.
4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and HPF.
4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to HPF an amount equal to any GST HPF must pay for any supply by HPF under this or any other agreement for the sale of the Products/hire of the Loan Equipment. 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.
- 5.1 **Delivery of the Services**
5.1 Delivery ("Delivery") of the Products/Loan Equipment is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Products/Loan Equipment at HPF's address; or
(b) HPF (or HPF's nominated carrier) delivers the Products/Loan Equipment to the Customer's nominated address even if the Customer is not present at the address.
5.2 At HPF's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
5.3 The Customer must take delivery by receipt or collection of the Products/Loan Equipment whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Products/Loan Equipment as arranged then HPF shall be entitled to charge a reasonable fee for redelivery and/or storage.
5.4 Subject to clause 5.5 it is HPF's responsibility to ensure that the Services start as soon as it is reasonably possible.
5.5 The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that HPF claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond HPF's control, including but not limited to any failure by the Customer to:
(a) make a selection; or
(b) have the site ready for the Services; or
(c) notify HPF that the site is ready.
5.6 HPF may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
5.7 Any time or date given by HPF to the Customer is an estimate only. HPF shall not be liable for any loss or damage whatsoever due to failure by HPF to deliver the Services (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of HPF.
- 6.1 **Risk**
6.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and the Customer must insure the Products on or before Delivery.
6.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, HPF is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by HPF is sufficient evidence of HPF's rights to receive the insurance proceeds without the need for any person dealing with HPF to make further enquiries.
6.3 If the Customer requests HPF to leave Products outside HPF's premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Customer's sole risk.
6.4 The Customer acknowledges that HPF is only responsible for Products that are replaced by HPF and that in the event that other parts, subsequently fail, the Customer agrees to indemnify HPF against any loss or damage to the parts, or caused by the parts, or any part thereof howsoever arising.
6.5 The Customer acknowledges and agrees that the presence of plant/rot root growth and/or blockages generally indicates damaged pipes. Accordingly the Customer agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.
- 7.1 **Access**
7.1 The Customer shall ensure that HPF has clear and free access to the work site at all times to enable them to deliver the Products/Loan Equipment. HPF 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 HPF.
7.2 It is the responsibility of the Customer to ensure that access is suitable to account the weight of laden trucks. The Customer agrees to indemnify HPF against all costs incurred by HPF in recovering such vehicles in the event they become bogged or otherwise immovable.
- 8.1 **Underground Locations**
8.1 Prior to HPF commencing any work the Customer must advise HPF of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
8.2 Whilst HPF will take all care to avoid damage to any underground services the Customer agrees to indemnify HPF 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.
- 9.1 **Title to Products**
9.1 HPF and the Customer agree that ownership of the Products shall not pass until:
(a) the Customer has paid HPF all amounts owing to HPF; and
(b) the Customer has met all of its other obligations to HPF.
9.2 Receipt by HPF 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.
9.3 If it is further agreed between the Customer and HPF that:
(a) until ownership of the Products passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Products and unless the Products have become fixtures must return the Products to HPF on request.
(b) the Customer holds the benefit of the Customer's insurance of the Products on trust for HPF and must pay to HPF the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
(c) the production of these terms and conditions by HPF shall be sufficient evidence of HPF's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with HPF to make further enquiries.
(d) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for HPF and must pay or deliver the proceeds to HPF on demand.
(e) the Customer should not convert or process the Products or intermix them with other Products but if the Customer does so then the Customer holds the resulting product on trust for the benefit of HPF and must sell, dispose of or return the resulting product to HPF as it so directs.
(f) unless the Products have become fixtures the Customer irrevocably authorises HPF to enter any premises where HPF believes the Products are kept and recover possession of the Products
(g) HPF may recover possession of any Products in transit whether or not delivery has occurred.
(h) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of HPF.
(i) HPF may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.
- 10.1 **Personal Property Securities Act 1999 ("PPSA")**
10.1 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/Loan Equipment previously supplied by HPF to the Customer (including any and all Products/Loan Equipment that will be supplied in the future by HPF to the Customer).
10.2 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 HPF may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify and upon request reimburse, HPF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products/Loan Equipment charged thereby;
(c) not register a financing change statement or a change demand without the prior written consent of HPF; and
(d) immediately advise HPF of any material change in its business practices of selling Products/Loan Equipment which would result in a change in the nature of proceeds derived from such sales.
- 10.3 HPF and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
10.5 Unless otherwise agreed to in writing by HPF, the Customer waives its right to receive a verification statement made to the Customer by HPF and 148 of the PPSA.
10.6 The Customer shall unconditionally ratify any actions taken by HPF under clauses 10.1 to 10.5.
- 11.1 **Security and Charge**
11.1 In consideration of HPF agreeing to supply the Products/Loan Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other asset capable of being charged, now or hereafter, and in all other assets now or in the future, 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).
11.2 The Customer indemnifies HPF from and against all HPF's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HPF's rights under this clause.
11.3 The Customer irrevocably appoints HPF and each director of HPF as the Customer's true and lawful attorneys to perform any necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12.1 **Customer's Disclaimer**
12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with HPF or to sue for damages or to claim restitution arising out of any inadvertent omission made to the Customer by HPF and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.
- 13.1 **Defects in Products/Loan Equipment**
13.1 The Customer shall inspect the Products/Loan Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify HPF of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford HPF an opportunity to inspect the Products/Loan Equipment within a reasonable time following delivery if the Customer believes the Products/Loan Equipment are defective in any way. If the Customer shall fail to comply with these provisions the Products/Loan Equipment shall be presumed to be free from any defect or damage. For defective Products/Loan Equipment, which HPF has agreed in writing that the Customer is entitled to reject, HPF's liability is limited to either (at HPF's discretion) replacing the Products/Loan Equipment or repairing the Products/Loan Equipment.
- 14.1 **Returns**
14.1 Returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 13.1; and
(b) HPF 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) HPF 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.
14.2 HPF may (in its discretion) accept the return of Products for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Products plus any freight.
14.3 Non-stockist items or Products made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 15.1 **Warranties**
15.1 To the extent permitted by statute, no warranty is given by HPF as to the quality or suitability of the Products for any purpose and any implied warranty, is expressly excluded. HPF shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof howsoever arising.
15.2 The Customer acknowledges and agrees that the presence of plant/rot root growth and/or blockages generally indicates damaged pipes. Accordingly the Customer agrees that these pipes cannot be fixed by simply removing plant/tree root growth or cleaning the drain, therefore no warranty is provided against this situation arising again in the future and in respect of any work carried out in relation thereto.
- 15.3 The conditions applicable to the warranty given on Products supplied by HPF are contained on the "Warranty Documentation" that will be supplied with the Products.
15.4 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 HPF as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded, HPF shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof howsoever arising.
- 16.1 **Consumer Guarantees Act 1993**
16.1 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 HPF to the Customer.
- 17.1 **Intellectual Property**
17.1 Where HPF has designed, drawn, written plans or a schedule of Services, or created any Products/Loan Equipment for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and Products/Loan Equipment shall remain vested in HPF, and shall only be used by the Customer at HPF's discretion.
17.2 The Customer warrants that all designs, specifications or instructions given to HPF will not cause HPF to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify HPF against any action taken by a third party against HPF in respect of any such infringement.
17.3 The Customer agrees that HPF may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Products/Loan Equipment which HPF has created for the Customer.
- 18.1 **Default and Consequences of Default**
18.1 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 HPF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
18.2 If the Customer owes HPF any money the Customer shall indemnify HPF from and against all costs and disbursements incurred by HPF in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HPF's collection agency costs, and bank dishonour fees).
18.3 Without prejudice to any other remedies HPF may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions HPF may suspend or terminate the supply of Products/Loan Equipment hire to the Customer. HPF will not be liable to the Customer for any loss or damage by any person or persons who are not HPF or who are not HPF's employees or agents.
18.4 Without prejudice to HPF's other remedies at law HPF shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HPF shall, whether or not due for payment, become immediately payable if:
(a) any money payable to HPF becomes overdue, or in HPF's opinion the Customer will be unable to make a payment when it falls due;
(b) 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
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 19.1 **Compliance with Laws**
19.1 The Customer and HPF 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.
19.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
19.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 20.1 **Cancellation**
20.1 HPF may cancel any contract to which these terms and conditions apply or cancel delivery of Products/Loan Equipment hire at any time before the Services are commenced by giving written notice to the Customer. On giving such notice HPF shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to HPF for Services already performed. HPF shall not be liable for any loss or damage or expenses incurred by the Customer following such cancellation.
20.2 In the event that the Customer cancels the delivery of Products/Loan Equipment hire, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by HPF as a direct result of the cancellation (including, but not limited to, any loss of profits).
20.3 Cancellation of orders for Products/Loan Equipment made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21.1 **Privacy Act 1993**
21.1 The Customer authorises HPF or HPF's agent to:
(a) access, collect, retain and use any information about the Customer;
(i) including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
(ii) for the purpose of marketing Products/Loan Equipment and services to the Customer.
(b) disclose information about the Customer, whether collected by HPF from the Customer directly or obtained by HPF 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.
21.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
21.3 The Customer shall have the right to request HPF for a copy of the information about the Customer retained by HPF and the right to request HPF to correct any incorrect information about the Customer held by HPF.
- 22.1 **Unpaid Seller's Rights**
22.1 Where the Customer has left any items with HPF for repair, modification, exchange or for HPF to perform any other service in relation to the item and HPF has not received or been paid for the item, or any other moneys owing to it by the Customer, HPF shall have, until all moneys owing to HPF are paid:
(a) a lien on the item; and
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected Products/Loan Equipment.
22.2 The lien of HPF shall continue despite the commencement of proceedings, or judgment for any moneys owing to HPF having been obtained against the Customer.
- 23.1 **Loan Equipment Hire**
23.1 Loan Equipment shall at all times remain the property of HPF and is returnable on demand by HPF. In the event that Loan Equipment is not returned to HPF in the condition in which it was delivered HPF retains the right to charge the Client the full cost of repairing the Loan Equipment. In the event that Loan Equipment is not returned at all HPF shall have the right to charge the Client the full cost of replacing the Loan Equipment. The Client shall:
(a) keep the Loan Equipment in their own possession and control and shall not assign the benefit of the Loan Equipment nor be entitled to a lien over the Loan Equipment.
(b) not alter or make any additions to the Loan Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Loan Equipment or in any other manner interfere with any identification or marking on the Loan Equipment.
(c) keep the Loan Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by HPF to the Client.
23.3 The Client accepts full responsibility for the safekeeping of the Loan Equipment and the Client agrees to insure, or self-insure, HPF interest in the Loan Equipment and agrees to indemnify HPF against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Loan Equipment. Further the Client will not use the Loan Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 24.1 **General**
24.1 The failure by HPF to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HPF's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable by the validity, existence, legality and enforceability of the remaining provisions shall be affected, prejudiced or impaired.
24.2 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.
24.3 HPF shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expenses (including loss of profit) suffered by the Customer arising out of breach by HPF of these terms and conditions (alternatively HPF's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services/Loan Equipment hire).
24.4 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 HPF nor to withhold payment of any invoice because part of that invoice is in dispute.
24.5 HPF may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
24.6 The Customer agrees that HPF may amend these terms and conditions at any time. If HPF makes a change to these terms and conditions, then that change will take effect from the date on which HPF notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for HPF to provide any Services/Loan Equipment hire to the Customer.
24.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
24.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.