

1. Definitions

- 1.1 “Service King” means Prestige Services Limited T/A Service King its successors and assigns or any person acting on behalf of and with the authority of Prestige Services Limited T/A Service King.
- 1.2 “Customer” means the person/s requesting Service King to provide the Services (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by Service King in the course of it conducting, or supplying to the Customer, any Services.
- 1.4 “Services” means all Services supplied by Service King to the Customer at the Customer’s request from time to time.
- 1.5 “Equipment” means all Equipment including any accessories supplied on hire by Service King to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Service King to the Customer.
- 1.6 “Price” means the price payable for the Services/Equipment as agreed between Service King and the Customer in accordance with clause 4 of this contract.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services/Equipment provided by Service King.
- 2.2 These terms and conditions may only be amended with Service King’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Service King.

3. Change in Control

- 3.1 The Customer shall give Service King 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 number/s, or business practice). The Customer shall be liable for any loss incurred by Service King as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 4.1 At Service King’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Service King to the Customer; or
 - (b) Service King’s estimated or quoted price (subject to clause 4.2) which will be valid for the period stated in the estimate or quote or otherwise for a period of thirty (30) days.
- 4.2 Service King reserves the right to change the Price if a variation to Service King’s estimate or quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required after an inspection due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, extra treatment or procedures required for bio-hazardous or other particular stain removal or as a result of any increase to Service King’s in the cost of materials and labour) will be charged for on the basis of Service King’s estimate or quote 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 Service King’s sole discretion a deposit may be required.
- 4.4 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Service King, which may be:
 - (a) on delivery of the Services/Equipment/Product;
 - (b) 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;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Service King.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and Service King.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Service King an amount equal to any GST Service King must pay for any supply by Service King under this or any other agreement for providing Service King’s Services/hire of the 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. Delivery of Services/Equipment/Products

- 5.1 At Service King’s sole discretion delivery of the Services/Equipment/Product shall take place when the Services are supplied to the Customer at the Customer’s nominated address.
- 5.2 Delivery of the Services/Equipment/Product to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

Prestige Services Limited T/A Service King – Terms & Conditions of Trade

- 5.3 Any time or date given by Service King to the Customer is an estimate only. The Customer must still accept delivery of the Services/Equipment even if late and Service King will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 6. Risk**
- 6.1 Irrespective of whether Service King retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as Service King may repossess the Incidental Items. The Customer must insure all Incidental Items on or before delivery.
- 6.2 The Customer acknowledges that in some instances pertaining to stain removal that repeated applications of treatments may be required. Although Service King shall take all due care, some residual fading of fabrics or other porous surfaces may result from such repeated spot treatments.
- 7. Access**
- 7.1 The Customer shall ensure that Service King has clear and free access to the work site at all times to enable them to undertake the Services. Service King shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, carpets or covered surfaces, floors or wall linings) unless due to the negligence of Service King.
- 8. Title**
- 8.1 Service King and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid Service King all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to Service King in respect of all contracts between Service King and the Customer.
- 8.2 Receipt by Service King 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 Service King's ownership or rights in respect of the Incidental Items shall continue.
- 8.3 It is further agreed that:
- (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to Service King immediately upon request by Service King;
 - (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for Service King and must pay to Service King the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for Service King and must pay or deliver the proceeds to Service King on demand.
 - (d) the Customer should not convert or process the Incidental Items or intermix them with other goods, but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Service King and must dispose of or return the resulting product to Service King as Service King so directs.
 - (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of Service King;
 - (f) the Customer irrevocably authorises Service King to enter any premises where Service King believes the Incidental Items are kept and recover possession of the Incidental Items.
- 9. Personal Property Securities Act 1999 ("PPSA")**
- 9.1 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 Incidental Items/Equipment previously supplied by Service King to the Customer (if any) and all Incidental Items/Equipment that will be supplied in the future by Service King to the Customer.
- 9.2 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 Service King may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Service King for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items/Equipment charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of Service King.
- 9.3 Service King and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by Service King, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

9.6 The Customer shall unconditionally ratify any actions taken by Service King under clauses 9.1 to 9.5.

10. Security and Charge

- 10.1 In consideration of Service King agreeing to supply Services/Equipment/Product, 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, 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).
- 10.2 The Customer indemnifies Service King from and against all Service King's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Service King's rights under this clause.
- 10.3 The Customer irrevocably appoints Service King and each director of Service King 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. Customer's Disclaimer

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

12. Errors and Omissions/Defects

- 12.1 The Customer shall inspect the Services/Equipment on delivery and shall within seven (7) days of delivery notify Service King of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford Service King an opportunity to inspect the Services/Equipment 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/Equipment shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 12.2 For defective Services, which Service King has agreed in writing that the Customer is entitled to reject, Service King's liability is limited to either (at Service King's discretion) replacing the Services or rectifying the Services provided that the Customer has complied with the provisions of clause 12.1.

13. Consumer Guarantees Act 1993

- 13.1 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 do not apply to the supply of Services by Service King to the Customer.

14. Intellectual Property

- 14.1 Where Service King has designed, drawn or developed Incidental Items/Equipment for the Customer, then the copyright in any Incidental Items shall remain the property of Service King.

15. Default and Consequences of Default

- 15.1 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 Service King's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes Service King any money the Customer shall indemnify Service King from and against all costs and disbursements incurred by Service King in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, Service King's collection agency costs, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies Service King may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Service King may suspend or terminate the supply of Services/Equipment to the Customer. Service King will not be liable to the Customer for any loss or damage the Customer suffers because Service King has exercised its rights under this clause.
- 15.4 Without prejudice to Service King's other remedies at law Service King shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Service King shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Service King becomes overdue, or in Service King's opinion the Customer will be unable to make a payment when it falls due;
 - (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.

16. Cancellation

- 16.1 Service King may cancel any contract to which these terms and conditions apply or cancel delivery of Services/Equipment at any time before the Services are commenced or Equipment due to be delivered by giving written notice to the Customer. On giving such notice Service King shall repay to the Customer any money paid by

Prestige Services Limited T/A Service King – Terms & Conditions of Trade

- the Customer for the Services/Equipment. Service King shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Customer cancels delivery of the Services/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Service King as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17. Privacy Act 1993**
- 17.1 The Customer authorises Service King or Service King'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 and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Service King from the Customer directly or obtained by Service King 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.
- 17.2 Where the Customer is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Customer shall have the right to request Service King for a copy of the information about the Customer retained by Service King and the right to request Service King to correct any incorrect information about the Customer held by Service King.
- 18. Equipment Hire**
- 18.1 Equipment shall at all times remain the property of Service King and is returnable on demand by Service King. In the event that Equipment is not returned to Service King in the condition in which it was delivered Service King retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all Service King shall have right to charge the Customer the full cost of replacing the Equipment.
- 18.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Service King to the Customer.
- 18.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Service King's interest in the Equipment and agrees to indemnify Service King 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 Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 19. General**
- 19.1 The failure by Service King to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Service King's right to subsequently enforce that provision. 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.
- 19.2 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.
- 19.3 Service King 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 Service King of these terms and conditions (alternatively Service King's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services/Equipment hire).
- 19.4 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 Service King nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 Service King may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6 The Customer agrees that Service King may amend these terms and conditions at any time. If Service King makes a change to these terms and conditions, then that change will take effect from the date on which Service King notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Service King to provide Services/Equipment to the Customer.
- 19.7 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.
- 19.8 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.