

## VQuip Pty Ltd Conditions of Sale

### 1. INTERPRETATION

In these Conditions of Sale ("Conditions of Sale"):

- 1.1. "Firm" means VQuip Pty Ltd (ABN 37 147 897 934), "Buyer" means the person, firm or company purchasing the Goods, "Buyer's Vehicle" means the motor vehicle delivered by or on behalf of the Buyer to the Firm the subject of the Goods to be installed and includes any fittings or other items comprising part of, or stored in, the motor vehicle, "Consumer" has the same meaning as prescribed under the Competition and Consumer Act 2010, "Contract" means a binding contract between the Buyer and the Firm constituted by the Buyer's acceptance of the Firm's quotation or similar (whether by way of purchase order, third party accessory order or similar), "Goods" means the materials and components to be installed in the Buyer's Vehicle and the Services to be performed the subject of a Contract; "PPSA" means the Personal Property Securities Act 2009, "PMSI" means a purchase money security interest as defined in the PPSA, "Premises" means (a) where the Goods are installed at the Firm's premises, 22 Rocco Drive, Scoresby, Victoria, and (b) where the Goods are installed at an address not being the Firm's premises (as nominated by either the Firm or the Buyer), that nominated address, "Proceeds" has the meaning given to it in the PPSA, and "Services" means the installation of the Goods into the Buyer's Vehicle and includes similar and/or ancillary services.
- 1.2. These Conditions of Sale may be updated by the Firm from time to time and shall apply as and from the date of update and publication at [www.vquip.com.au](http://www.vquip.com.au).

### 2. GENERAL

- 2.1. Unless otherwise agreed in writing, every Contract shall be subject to and incorporate these Conditions of Sale (to the extent that the same are applicable). These Conditions of Sale override any standard terms and conditions stipulated, incorporated or referred to in the Buyer's purchase order, third party accessory order or similar.
- 2.2. These Conditions of Sale shall be governed by the laws applicable in Victoria and the Buyer submits to the jurisdiction of the Victorian Courts and Tribunals.
- 2.3. If any clause or part of these Conditions of Sale not being of a fundamental nature is held to be illegal or unenforceable the validity and enforceability of the remainder of these Conditions of Sale shall not be affected.
- 2.4. These Conditions of Sale bind:
  - 2.4.1. if these Conditions of Sale are included as part of any trading agreement entered into with the Firm - each person or entity to that trading agreement; or
  - 2.4.2. if these Conditions of Sale are included as part of, or accompany, a credit account application - each person or entity to that credit account application; or
  - 2.4.3. if these Conditions of Sale are included or referenced as part of, or accompany, any quotation, confirmation of order, invoice or other document issued by the Firm - each person or entity to whom the quotation, confirmation of order, invoice or other document is addressed or identified in the quotation, confirmation of order, invoice or other document as a customer, or to whom Goods are expressed to have been sold (or to be sold) in the quotation, confirmation of order, invoice or other document;in respect of each sale or supply of Goods by the Firm to the relevant Buyer, and in respect of each Contract between the Firm and the Buyer for each such sale or supply.

### 3. PRICE

- 3.1. The Buyer shall pay the price of the Goods as stated in each invoice issued by the Firm pursuant to a Contract (or as otherwise communicated to the Buyer) ("Price").
- 3.2. To the extent that the Price for the Goods does not take into account Goods and Service Tax ("GST"), then the Firm is entitled to charge the Buyer an additional amount ("GST Amount") equal to the GST payable by the Firm on its supply to the Buyer.
- 3.3. Unless otherwise agreed in writing by the Firm, the Price is exclusive of packaging costs, freight charges, delivery costs, bank charges and such other charges notified by the Firm to the Buyer all of which, if incurred, are payable by the Buyer ("Price Additions").
- 3.4. If the cost to the Firm of supplying the Goods not yet delivered shall be increased materially by any dispute or cause and the parties concerned cannot agree on how such increase shall be borne, the Firm may cancel the Contract without liability in respect of such undelivered Goods.
- 3.5. Where delivery of the Goods is to be made by instalments, each delivery shall be treated as a separate contract and failure, suspension or delay in any delivery or defect in the Goods delivered shall not vitiate the contract as to other Goods to be delivered.

### 4. ACCEPTANCE, RISK AND DELIVERY

- 4.1. The Buyer accepts the Goods and the Goods are at the Buyer's risk immediately upon leaving the Premises, whether the Goods are delivered by the Firm or by someone other than the Firm, or collected by the Buyer or by someone on the Buyer's behalf. If the Buyer wishes to insure against loss or damage to the Goods after they have left the Premises, it shall be the Buyer's responsibility to do so.
- 4.2. All delivery dates advised by the Firm from time to time are estimates only and may be revised by the Firm at any time prior to delivery on notification to the Buyer. The Firm shall not be liable for any delay in delivery, nor shall the Buyer be entitled to refuse or to accept delivery, except where delay (a) exceeds 30 business days after the Buyer has notified the Firm in writing of delivery not having taken place in accordance with the Firm's advised estimated delivery date, and (b) is due to circumstances within the Firm's control. Without limiting what is meant by the expression 'within the Firm's control', the following circumstances shall be deemed NOT to be within the Firm's control: Act of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, government action, and delay in delivery of material or components comprising all or part of the Goods. During any such period of delay the Buyer, after having given reasonable prior written notice of its intention to do so, shall be entitled to purchase elsewhere such Goods only as shall be necessary for the Buyer's immediate requirements, and to cancel that part of a Contract associated with such purchase.

### 5. CONTRACT VARIATIONS

- 5.1. The Firm may agree to, but is not obliged to, a variation to a Contract requested by the Buyer. Any agreement is subject to the Buyer agreeing to and accepting any Price variation (to include, but not be limited to, all additional costs to be charged or incurred by the Firm) proposed by the Firm as a consequence of the proposed variation ("Price Variation"). In such a case, the Buyer agrees to and acknowledges that the Contract shall be so varied, which shall include the Price Variation.
- 5.2. In the event a Contract is varied in accordance with clause 5.1, in addition to the Firm's rights as provided for in clause 4.2, the Firm shall not be liable, in any way, to the Buyer for any delay caused to the delivery date as a consequence of such variation.

### 6. TERMS OF PAYMENT

- 6.1. The Buyer shall pay the Price (including any GST Amount, Price Additions and Price Variation) ("Total Price") in the manner, and at the time(s), detailed in the Firm's quotation, confirmation of order, invoice or other document issued by the Firm, failing the provision of same by no later than the end of the month following the month of invoice ("Due Date").
- 6.2. If the Buyer does not pay the full amount of the Total Price on or before the Due Date, the Firm may charge interest, at the rate of 1.5% per calendar month, on the outstanding balance of the Total Price as and from the Due Date until the full amount of the Total Price has been paid.
- 6.3. All expenses incurred by the Firm in collecting an overdue payment from the Buyer, including debt collection agency, legal and court fees, shall be payable to the Buyer to the Firm as a debt due immediately upon demand by the Firm.
- 6.4. If the Buyer fails to make any payment on the Due Date, or becomes bankrupt or enters into liquidation (other than for the purposes of amalgamation or reconstruction), makes any composition arrangement with creditors, or has a receiver appointed of its undertaking property or assets or any part thereof, the Firm shall have the option to withhold or cancel further deliveries provided that the failure on the part of the Firm to exercise such option in respect to one or more deliveries shall not affect their right to exercise it in respect of other deliveries.
- 6.5. Notwithstanding the above, the Firm may require a deposit to be paid and/or payment of the Total Price to be paid by way of instalments with respect to any Contract, as advised by the Firm to the Buyer.

## 7. DEFAULT BY THE BUYER

- 7.1. If:
  - 7.1.1. the Buyer breaches any of these Conditions of Sale;
  - 7.1.2. any payment tendered by or on behalf of the Buyer is dishonoured for payment;
  - 7.1.3. the Buyer fails to comply with any demand for payment issued by the Firm;
  - 7.1.4. any amount payable by the Buyer to the Firm becomes overdue for payment or, in the Firm's opinion, the Buyer will be unable to meet its payment obligations to the Firm as they fall due; then, without prejudice to the Firm's other remedies under these Conditions of Sale or at law;
  - 7.1.5. the Firm will be entitled to cancel all or any part of any of any Contract which remain unfulfilled;
  - 7.1.6. all amounts owing to the Firm by the Buyer will, whether or not due for payment, become immediately payable by the Buyer;
  - 7.1.7. the Buyer's right to possess or otherwise deal with the Goods in respect of which title has not passed to the Buyer will cease; and
  - 7.1.8. the Firm will be entitled to enter any premises where the Goods in respect of which title has not passed to the Buyer are kept, and remove, repossess and re-sell all or any such Goods.
- 7.2. The Buyer indemnifies the Firm in respect of any claims or actions against, and costs, expenses and other liabilities incurred by the Firm in relation to the removal, repossession, and sale of Goods pursuant to these Conditions of Sale, including without limitation, any claims brought by third parties.
- 7.3. If the Firm retains possession or control of Goods and payment of the Price of those Goods is due by the Buyer to the Firm, then (without limiting any other provision of these Conditions of Sale), whether title in those Goods has passed to the Buyer or remains with the Firm, the Firm may dispose of those Goods and may claim from the Buyer any loss incurred by the Firm on such disposal.

## 8. CLAIMS AND LIMITATION OF LIABILITY

- 8.1. The Buyer shall inspect or shall be deemed to have inspected the Goods upon delivery. Where the Goods supplied are not in accordance with the Contract the Buyer must give notice in writing, within 7 days of delivery, of such non-conformity. No non-conformity claim may be made after this date. If the Firm is satisfied that the Goods are not in accordance with the Contract, save for a Contract where the Buyer is a Consumer, the Firm's liability to the Buyer shall be limited, at the Firm's election, to either repair or replace the Goods in question, or refund the Contract Price to the Buyer for the Goods.
- 8.2. The Firm excludes all statutory warranties and guarantees in connection with the Goods supplied to the Buyer, other than those which may not be excluded under the Competition and Consumer Act 2010 or other relevant legislation. For the avoidance of doubt, this exclusion includes an exclusion of all conditions and warranties implied by custom or the common law for damages suffered by the Buyer arising in any way.
- 8.3. The Buyer acknowledges and accepts that the Goods may be subject to slight changes in colour, thickness or marbling and that same shall not constitute a defect in the Goods.

## 9. RETURNS

- 9.1. The Buyer may only return the Goods to the Firm for credit if prior written approval of the Firm for the return has been obtained, and delivery costs associated have been paid by the Buyer.
- 9.2. If the Buyer returns the Goods otherwise than in accordance with this clause, the Firm may at its sole discretion accept the return and grant a credit to the Buyer.
- 9.3. If the Firm does not accept a return the Firm may hold the Goods on the Buyer's behalf at the Buyer's expense. In such a case, the Firm may, provided it has given the Buyer written notice of its intention to do so, arrange to on-sell or dispose of the Goods.
- 9.4. Any credit given by the Firm for Goods returned by the Buyer is subject to a re-stocking fee equivalent to 15% of the Total Price of the Goods (or such other amount as advised by the Firm to the Buyer).

## 10. CANCELLATION

- 10.1. No Contract may be cancelled or deferred without prior written consent of the Firm. Without limiting this right, in the case of a Contract involving custom-made Goods, it cannot be cancelled after:
  - 10.1.1. the Firm has scheduled manufacture of such Goods; or
  - 10.1.2. the Firm has purchased the materials or components required for the manufacture of such Goods.

## 11. PROPERTY

- 11.1. Property in and title to Goods supplied shall not pass to the Buyer until payment of the Total Price associated with those Goods has been received by the Firm in full.
- 11.2. Until property in the Goods passes to the Buyer the Buyer shall, unless otherwise agreed by the Firm in writing, store the Goods so that they are clearly identified as the property of the Firm.
- 11.3. If the Buyer fails to make payment of the Total Price associated with Goods supplied to the Buyer, or the Firm reasonably believes the Buyer is unable to make payment of the Total Price associated with Goods supplied to the Buyer in accordance with these Conditions of Sale, the Firm shall be entitled to enter any premises in which the Goods are stored to repossess the Goods.

## 12. PPSA SECURITY INTERESTS

- 12.1. The Buyer acknowledges and agrees that these Conditions of Sale create a security interest (including, where applicable, a PMSI) in the Goods (and their Proceeds) supplied by the Firm to the Buyer from time to time:
- 12.2. The Buyer agrees to do all things necessary and execute all documents reasonably required by the Firm to register the PMSI granted by the Buyer under these Conditions of Sale, and ensure that the Firm acquires a perfected security interest in the Goods under the PPSA.
- 12.3. Until title to Goods passes to the Buyer, the Buyer must not give to the Firm a written demand, or allow any other person to give to the Firm a written demand, requiring the Firm to register a financing change statement under the PPSA in respect of the Buyer, the Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of the Goods.
- 12.4. The Buyer will be responsible for payment of any fees (and any other costs) that the Firm incurs in relation to investigating, perfecting or registering its security interest in the Goods, and those fees and costs may be added as a charge on invoices issued by the Firm to the Buyer.

## 13. RESPONSIBILITY AND RISK

- 13.1. The Buyer acknowledges and agrees that, whilst the Firm will take reasonable care to safeguard the Buyer's Vehicle whilst in its possession or custody (whether situated at the Premises or otherwise), the Buyer shall be fully responsible for all risks associated with the Buyer's Vehicle whilst it is in the possession or custody of the Firm and that the Firm shall not be responsible or liable to the Buyer in any way for any loss or damage (direct or consequential) that may arise with respect to the Buyer's Vehicle whilst in the Firm's possession or custody, whether arising due to the wilful or negligent act or omission of the Firm or otherwise.
- 13.2. The Buyer shall ensure that, at all times whilst the Buyer's Vehicle is in the possession or custody of the Firm, the Buyer's Vehicle shall be insured with a reputable insurer for fully insurable or replacement value and providing cover against damage caused or suffered (a) to the Buyer's Vehicle, (b) to third party property by the Buyer's Vehicle, and (c) due to theft, vandalism, malicious acts, an act of God, fire, lightning, explosion, flood, hail storm or any other similar event.
- 13.3. The Buyer indemnifies the Firm with respect to any and all loss and damage that the Firm suffers or incurs as a consequence of the Buyer failing to take out insurance as required under clause 13.2, or where the Buyer's insurer recovers monies paid out under such insurance against the Firm by way of contribution or otherwise.

## 14. BUYER AS TRUSTEE

- 14.1. Where the Buyer enters into a Contract with the Firm in its capacity as trustee of a trust, whether or not disclosed to the Firm and whether or not so expressed in the Contract, the Buyer warrants that:
  - 14.2. it is the sole trustee of the trust and has the power and authority to enter into the contract;
  - 14.3. it does so with the consent of, and for the benefit of, all beneficiaries of the trust;
  - 14.4. it does so both in its personal capacity and in the capacity of trustee;
  - 14.5. it is a right of indemnity from the trust's assets for all obligations incurred by it; and
  - 14.6. it will not remove or resign as trustee without the Firm's express written consent.