

TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

In these terms and conditions:

"Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

"Consumer Guarantee" means a consumer guarantee as it applies to the Services, as set out in Part 3-2, Division 1, Subdivision B of the Australian Consumer Law.

"Company" means the member of the Vertikote Group who is responsible for the provision of the Services as notified to the Customer.

"Customer" means the person referred to on the reverse hereof, being the purchaser of the Services.

"Goods" means the Customer's goods.

"GST" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Services" means any work to be performed on the Goods by the Company including, without limitation, painting, powder coating and other forms of finishing work.

"Vertikote Group" means each of Vertikote Corp. Pty Ltd, Vertikote (VIC) Pty Ltd, Colorworks Mobile Painting Pty Ltd and such other related body corporate (as defined in the *Corporations Act 2001* (Cth)) of any of those entities.

2. GENERAL

Any order placed by the Customer is deemed to be an order incorporating these terms and conditions. These terms and conditions may only be varied in writing authorised by a duly authorised officer of the Company. These terms and conditions prevail to the extent of any inconsistency with any other terms and conditions negotiated between the Company and the Customer.

The Customer acknowledges that it has read and understands these terms and conditions.

These terms and conditions shall be binding upon the Company, the Customer and their respective directors, servants, agents, executors, trustees and assigns.

These terms and conditions are governed by and are to be construed in accordance with the law of New South Wales and the Company and the Customer irrevocably submit to the non-exclusive jurisdiction of the Courts in and of that State.

3. TERMS

Except as contemplated by Clause 3.2, all invoices issued by the Company to the Customer are payable within thirty days of invoicing unless otherwise expressly notified by the Company in writing. The Company reserves the right to invoice on completion of the Services whether or not the Goods have been collected by or on behalf of the Customer.

Cash on delivery Customers must pay their outstanding invoice prior to collection of the finished Goods.

The Company may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate but ongoing supply pursuant to these Terms and Conditions.

4. PRICES

All prices shall be as quoted or in accordance with arrangements current at the time of delivery to the Company. Any quotations given by the Company to the Customer shall only be binding upon the Company if provided in writing by a duly authorised officer of the Company. Except as expressly stated otherwise in writing by a duly authorised officer of the Company, all quoted prices are exclusive of GST.

All prices quoted for the Services are subject to change, including, without limitation, as a result of variations in freight, exchange rates, customs duty, packing charges, insurance costs or other fees or charges incurred by the Company in connection with the Services. In the event of any such price change after acceptance by the Customer of the Company's quotation, the Company will notify the Customer of the price change and allow the Customer to withdraw its order within two (2) business days of receiving the notice. The Customer will be deemed to have accepted the price change if it does not withdraw its order within this period.

5. DELIVERY AND COLLECTION

The Customer will arrange for delivery and collection of the Goods from the Company's premises at the Customer's expense.

The person or persons responsible for the delivery of the Goods to the Company shall, prior to the unloading of the Goods, report to the Company's despatch clerk and shall not unload the Goods until permission to do so is given by the Company's despatch clerk.

All Goods delivered to the Company by the person or persons referred to in Clause 5.1 shall be accompanied by the Company's official order form which shall be presented to the Company's despatch clerk and approved by them prior to the unloading of the Goods.

Any time quoted for collection of the Goods is an estimate only and the Company shall not be liable for failure to have the Goods available for collection or for delay arising from any cause whatsoever.

The Customer shall not be relieved from any obligation to pay for the Services by reason of any delay in having the Goods available for collection. The Company reserves the right to have the Customer collect its Goods by instalments and each instalment shall be deemed to be the subject of a separate contract. Failure to collect any instalment shall not entitle the Customer to repudiate the contract.

6. LIABILITY AND CLAIMS

To the maximum extent permitted by law, the Company excludes:

- from these terms and conditions, all guarantees, warranties and other terms implied by statute, general law, international convention or custom;
- all liability to the Customer for:
 - loss or damage suffered or incurred by the Customer arising from any negligent act or omission on the part of the Company or its servants or agents; and
 - loss of profits, revenue, business, opportunity, production, goodwill, contract, anticipated saving whether direct or indirect, or normal or consequential; or
 - any special, consequential or indirect loss that is beyond the normal measure of loss.

Without limiting clause 6.1, the Company excludes all liability to the Customer for loss or damage or to rectify the Services performed on the Goods in any circumstances where:

- the Goods provided by the Customer to the Company are in a condition which does not allow a proper application of the Services to the Goods including, without limitation, Goods which:
 - have been coated with graphite, grease, hydraulic oil or wax or being affected by rust;
 - have a latent or patent defect;
 - have foreign matter adhesives attached to them which cannot be removed during normal cleaning processes undertaken by the Company;
 - have been sanded and not properly finished;
 - are not suitably designed for the Services rendered by the Company including, without limitation, the failure of the Goods to have suitable drain holes to drain pre-treatment chemicals from the hollow tubing contained in the Goods;
 - do not have appropriate holes or attachments for the hanging of the Goods to enable the Company to provide the Services;
 - fail to comply with the requirements of the Australian Standards Association from time to time;
 - have been acknowledged by the Customer in the Company's "Defective Goods Received" form to be in a defective state; or
 - have been galvanised or externally treated/coated in any other manner by a party other than the Company prior to delivery to the Company and which treatment as a result does not allow the Services to be properly performed or administered or
- the spray/shade/colour pattern variation on the coating of the Goods after the Services have been performed are different from the spray/shade/colour pattern requested by the Customer but nevertheless are within the acceptable margin of difference allowed by the Australian Standards Association from time to time.

To the maximum extent permitted by law, the Company's liability for any breach of a Consumer Guarantee shall be limited to one of the following as determined by the Company:

- in relation to the supply of goods:
 - the replacement of the goods;
 - the repair of the goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - the payment of the cost of repairing the goods; and
- in relation to the supply of services:
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.

To the maximum extent permitted by law, and subject to this clause 6, if the Customer wishes to make any claim against the Company, it must:

- give a written notice to the Company setting out particulars of any alleged defects to the Goods; and
- to give the Company a reasonable opportunity to examine the Goods, return to the Company the whole or any part of the Goods to which the alleged defects apply,

in each case within 14 days after collection of the Goods.

6.5 To the maximum extent permitted by law, the Company's total liability to the Customer in contract for breach of these terms and conditions is limited as determined by the Company refunding any amount paid by the Customer to the Company in respect of the Services actually carried out or supplying the Services again.

6.6 To the maximum extent permitted by law, the Customer must indemnify and hold harmless the Company from and against any liability whatsoever and howsoever arising in connection with the use of the Goods by the Customer or any successor in title to the Customer.

7. **PACKING**

Unless otherwise indicated prices include standard packing. If packages are charged for and are returnable, allowance will only be made for the same when they have been received back by the Company in good condition.

8. **DESCRIPTION**

Any description of Services contained in these terms and conditions is given by way of identification only and use of such description shall not constitute this contract a sale by description.

9. **DEFAULT OF CUSTOMER**

If the Customer defaults on any payment, becomes unable to pay its debts as and when they fall due, commits an act of bankruptcy, circumstances exist which would entitle any creditor to appoint a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy, administrator or liquidator, or analogous person over the Customer's assets or undertakings or any of them, or enters into involuntary liquidation, the Company may, at its discretion do any one or more of the following:

- (a) charge interest at the interest at the rate of 2% per year above the standard overdraft rate (for overdrafts under \$100,000) applied by the Company's primary bank at the time;
- (b) withhold further deliveries; or
- (c) terminate the contract without prejudice to its rights thereunder (including in respect of amounts due to the Company prior to termination).

10. **LIEN**

Notwithstanding clause 18, in addition to any lien or other security interest to which the Company may by statute or otherwise be entitled, the Company shall, in the event of the Customer committing an act of default as specified in clause 9, be entitled to a general lien on all Goods belonging to the Customer that are in the Company's possession or under the Company's control (whether or not Services rendered in respect of the Goods or some of them have been paid for), for the unpaid price of any other Services rendered to the Customer under this or any other contract.

11. **WAIVER**

Failure by the Company to insist upon strict performance of any of these terms and conditions shall not be deemed a waiver of any rights the Company may have under them, and shall not be deemed a waiver of any rights the Company may have in respect of any subsequent breach.

12. **LICENCES**

All Services are performed on the understanding that all licences and permits under all relevant statutes, ordinances, rules and regulations have been obtained by the Customer and the Customer will ensure that the installation and use of all Goods meets all requirements at law.

13. **THIRD PARTY INTELLECTUAL PROPERTY**

The Customer warrants that the Company's provision of the Services in respect of the Goods in accordance with any instruction furnished by or on behalf of the Customer to the Company shall not infringe any intellectual property rights, including, without limitation, any patent, registration, design or trademark rights of any third party. The Customer must indemnify and hold harmless the Company, its successors and assigns against all actions, costs and expenses incurred by any of them in the event of infringement or unauthorised use of any such intellectual property rights arising out of the performance of the Services in respect of the Goods in accordance with any instruction furnished by or on behalf of the Customer and it is specifically agreed that the performance by the Company of the Services does not confer on the Customer ownership of any intellectual property rights of the Company.

14. **PERFORMANCE**

Any figures or estimates given for performances of Services are based upon the Company's knowledge and experience and are such as the Company would reasonably expect to obtain on test. The Company will only accept liability for failure to achieve the figures or estimates given when such figures or estimates are guaranteed by the Company in writing to be within specified margins.

15. **SUB-CONTRACTING**

The Company may sub-contract the supply of all or any part of the supply of Services the subject of any quote provided by the Company to the Customer.

16. **ASSIGNMENT**

The Company may assign its rights under these terms and conditions without the prior written consent of the Customer. The Customer may only assign its rights under these terms and conditions with the prior written consent of the Company.

17. **SEVERABILITY**

If any provision of these terms and conditions is illegal in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these terms and conditions.

18. **PPSA**

18.1 Defined terms used in this clause 18 have the same meaning as given to them in the PPSA.

18.2 In addition to any lien or other security interest to which the Company may by statute or otherwise be entitled, the Company and the Customer acknowledge that these terms and conditions constitutes a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of the Company over the goods supplied to the Customer, as Grantor, pursuant to these terms and conditions, and over the Proceeds (including any sale monies or an account for such monies and insurance monies).

18.3 The goods supplied or to be supplied under these terms and conditions fall within the PPSA classification of "other Goods" acquired by the Customer pursuant to these terms and conditions.

18.4 The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to the Seller.

18.5 The Customer agrees to indemnify and hold harmless the Company, its successors and assigns against all actions, costs and expenses incurred by any of them associated with the;

- (a) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and
- (b) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Customer.

18.6 The Customer agrees:

- (a) that, to the extent permitted at law, nothing in sections 130 to 143 of the PPSA will apply to these Terms of Trade or the Security under these Terms of Trade;.
- (b) to waive its right to do any of the following under the PPSA:
 - (i) receive notice of removal of an Accession under section 95;
 - (ii) receive notice of an intention to seize Collateral under section 123;
 - (iii) object to the purchase of the Collateral by the Secured Party under section 129
 - (iv) receive notice of disposal of Collateral under section 130;
 - (v) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged
 - (vi) receive a Statement of Account if there is no disposal under section 132(4);
 - (vii) receive notice of retention of Collateral under section 135;
 - (viii) redeem the Collateral under section 142; and
 - (ix) reinstate the Security Agreement under section 143.

19. **FORCE MAJEURE**

The Company shall not be responsible for delays or defaults in deliveries if occasioned by war, strike, fire, pestilence, the act of God or the public enemy, industrial action or transportation cancellations, riot, or civil commotion or other causes beyond its reasonable control.