

Terms and Conditions of Service

In these Terms, when we say **you** or **your**, we mean both you and any entity you are authorised to represent (such as your employer). When we say **we**, **us**, or **our**, we mean Viper Safety & Training Pty Ltd (ACN 603 169 080). We and you are each a **Party** to these Terms, and together, the **Parties**.

These Terms form our contract with you, and sets out our obligations as a service provider and your obligations as a customer. You cannot use our Services unless you agree to these Terms.

These Terms were last updated on 12 February 2024.

OUR DISCLOSURES

Please read these Terms carefully before you accept. We draw your attention to:

- our privacy policy (on our website) which sets out how we will handle your personal information; and
- clause 12 (Liability) which sets out exclusions and limitations to our liability under these Terms.

These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

1. Engagement and Term

1.1 These Terms apply from the Commencement Date until the date that is the earlier of:

- (a) the date the Services are completed (as reasonably determined by us); or
- (b) the date on which these Terms are terminated,

(Term)

2. Services

2.1 In consideration of your payment of the Price, we will provide:

- (a) safety audit services on the machinery specified by you;
- (b) a written report detailing the results of our audit, for each machine we audit, in accordance with the national occupational health and safety regulations of 2017 (**Report**); and
- (c) a sticker for each machine we have audited for you with a QR code linked to that machine's Report;

as set out in the Quote, in accordance with these Terms, whether ourselves or through our Personnel.

(Services)

2.2 To the extent of any ambiguity or discrepancy between a Quote and these Terms, the terms of the Quote will prevail.

2.3 If these Terms express a time within which the Services are to be supplied, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only.

2.4 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the scope of the Services or our obligations under these Terms, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.

3. Your Obligations

3.1 You agree to (and to the extent applicable, ensure that your Personnel agree to):

- (a) comply with these Terms, all applicable laws, and our reasonable requests;
- (b) provide us (and our Personnel) with access to your premises (and its facilities) and any other premises as is reasonably necessary for us to provide the Services, free from harm or risk to health or safety at the times and on the dates reasonably requested by us or as agreed between the Parties;
- (c) where applicable, provide us with all work, health and safety training necessary to provide our Services on your premises;
- (d) provide us with all documentation, information, instructions, cooperation and access reasonably necessary to enable us to provide the Services, including the email address you require us to use to send any Reports to you;
- (e) not modify a Report in any way without our prior written consent; and
- (f) not (or not attempt to) disclose, or provide access to, the Services to third parties without our prior written consent.

3.2 You agree to pay our additional costs reasonably incurred as a result of you failing to comply with this clause 3.

4. Price and Payment

4.1 In consideration for us providing the Services, you agree to pay all amounts due under these Terms in accordance with the Payment Terms.

4.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under these Terms or at law):

- (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs); and/or
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms.

4.3 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

5. Intellectual Property

5.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

5.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials does not automatically vest in us, you hereby assign all such Intellectual Property Rights to us and agree to do all other things necessary to assure our title in such rights.

5.3 We grant you a non-exclusive, revocable, royalty-free, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you and the New Materials, including any Report we provide to you, solely for your use and enjoyment of the Services, as contemplated by these Terms.

5.4 You grant us a non-exclusive, irrevocable, royalty-free, worldwide, non-sublicensable (other than to our related bodies corporate, as that term is defined in the *Corporations Act 2001* (Cth)) and non-transferable right and licence to use Your Materials that you provide to us solely for the purpose of performing of our obligations or exercising our rights under these Terms.

5.5 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.

5.6 This clause 8 will survive termination or expiry of these Terms.

6. Confidential Information

6.1 Subject to clause 9.5, each Party must (and must ensure that its Personnel) keep confidential, and not use (except to perform its obligations under this Agreement) or permit any unauthorised use of, information provided by the other Party, including information about this Agreement and the other Party's business and operations.

6.2 Clause 9.4 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that the disclosing Party ensures the adviser complies with the terms of clause 9.4.

6.3 This clause 9 will survive the termination of these Terms.

7. Privacy

Each Party agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

8. Australian Consumer Law

8.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at law, nothing in these Terms excludes those Consumer Law Rights.

8.2 Subject to your Consumer Law Rights, we provide all material, work and services (including the Services) to you without conditions or warranties of any kind, implied or otherwise, whether in statute, at law or on any other basis, except where expressly set out in these Terms.

8.3 This clause 10 will survive the termination or expiry of these Terms.

9. Liability

9.1 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by law:

- (a) we will not be liable for any Liability arising from or connected with:
 - a. your use or reliance on a Report; and
 - b. any actions taken by third parties as a result of information contained in a Report;
- (b) neither Party will be liable for Consequential Loss;
- (c) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss;
- (d) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
- (e) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the Price paid by you to us in respect of the supply of the relevant Services to which the Liability relates.

9.2 This clause 11 will survive the termination or expiry of these Terms.

10. Termination

10.1 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.

10.2 Upon expiry or termination of these Terms:

- (a) we will immediately cease providing the Services;
- (b) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Services already performed are not refundable to you;
- (c) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
- (d) by us pursuant to clause 12.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
- (e) we may retain your documents and information (including copies) to the extent required by law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 9.

10.3 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

10.4 This clause 12 will survive the termination or expiry of these Terms.

11. General

11.1 **Amendment:** Subject to clauses 2.4 and 2.5, these Terms may only be amended by written instrument executed by the Parties.

11.2 **Assignment:** Subject to clauses 13.3 and 13.14, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

11.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.

11.4 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, these Terms (**Dispute**) without first meeting a representative of the other Party within 10 Business Days of notifying that other Party of the Dispute. If the Parties cannot resolve the Dispute at that meeting, either Party may refer the Dispute to mediation administered by the Australian Disputes Centre.

11.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and

(b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under these Terms for a period in excess of 60 days, then the other Party may by notice terminate these Terms, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.

- 11.6 **Governing Law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 11.7 **Notices:** Any notice given under these Terms must be in writing addressed to the addresses set out in these Terms, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 11.8 **Publicity:** Despite clause 9, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Services to you, including on our website or in our promotional material.
- 11.9 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 11.10 **Subcontracting:** We may subcontract the provision of any part of the Services without your prior written consent. We agree that any subcontracting does not discharge us from any liability under these Terms and that we are liable for the acts and omissions of our subcontractor.

12. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Business Day means a day on which banks are open for general banking business in Melbourne, Victoria, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date that is the earlier of:

- (a) the date that you accept the Quote;
- (b) the date that you ask us to begin supplying the Services; or
- (c) the date that you make part or full payment of the Price.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Price and any Expenses will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 10.1.

Expenses means any travel costs or third party costs or disbursements, reasonably and directly incurred by us and approved in advance by you for the purpose of the supply of the Services.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or Intellectual Property means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth) and includes any similar rights in any jurisdiction in the world.

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with these Terms or the supply of the Services, whether before or after the

Commencement Date and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and Your Materials.

Our Materials means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property, but excludes New Materials and Your Materials.

Payment Terms means the timings for payment of the Price and any Expenses, as set out in the Quote.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Quote, as adjusted in accordance with these Terms.

Quote means the document to which these Terms are attached or incorporated.

Terms means these terms and conditions and any documents attached to, or referred to in, each of them.

Your Materials means all Intellectual Property owned or licensed by you or your Personnel before the Commencement Date (which is not connected to these Terms) and/or developed by or on behalf of you or your Personnel independently of these Terms and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and New Materials.