

**LES KELLY PANEL & PAINT
TERMS AND CONDITIONS**

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS:

Throughout these terms and conditions the following definitions and interpretations are applicable:

- **"Les Kelly" and "Les Kelly Panel & Paint"** means Les Kelly Panel & Paint Pty Ltd ABN 82 212 039 665, trading as Les Kelly Panel & Paint .
- **"Customer"** is defined to mean the individual or entity purchasing and receiving Goods and/or Services sold and/or provided by Les Kelly Panel & Paint.
 - o If the Customer is comprised of more than one person then "Customer" means each of those persons collectively and individually and the obligations and liabilities on the part of the Customer as outlined in these terms & conditions binds all of them jointly and severally.
 - o A reference to the singular includes the plural and vice versa;
 - o A reference to one gender denotes the relevant gender;
 - o A person denotes an individual, corporation or other legal entity as is applicable.
- **"Customer's Land"** means all of the Customer's right, title and interest in land (held now or in the future, wherever located) whether owned by the Customer at law, in equity or as trustee of any Trust;
- **"Delivery Date"** means, with regard to any Goods or Services, the date as agreed upon between Les Kelly Panel & Paint and the Customer or the date as stipulated by Les Kelly Panel & Paint by which the Goods are to be delivered and/or the Services are to be provided.
- **"Goods"** means goods supplied or to be supplied by Les Kelly Panel & Paint to the Customer including goods manufactured at the Customer's request;
- **"Services"** means services supplied or to be supplied by Les Kelly Panel & Paint to the Customer including but not limited to panel beating, or spray painting, or mechanical work, or electrical work, or windscreen repairs and/or replacement, or the transportation of the Customer's vehicle or vehicles at the Customer's request, or any other work carried out as requested by the Customer;
- **"Moneys"** means all moneys now or in the future actually or contingently owing by the Customer to Les Kelly Panel & Paint and includes any part of those moneys and includes all interest accruals and costs, expenses, and disbursements;
- **"PPSA"** means the *Personal Property Securities Act 2009 (Cth)*;

2. TERMS AND CONDITIONS

Les Kelly Panel & Paint and the Customer agree that these terms and conditions shall apply to the supply of all Goods and/or Services provided by Les Kelly Panel & Paint to the Customer despite any prior agreements, prior offers, dealings or trade usages, or any terms communicated by the Customer to Les Kelly Panel & Paint.

The customer agrees and accepts to be bound by these Terms & Conditions without limitation or waiver (notwithstanding that the Customer may not have signed these Terms & Conditions) upon the Customer's approval of Les Kelly Panel & Paint carrying out work whether that be the supply of goods, the performance of services or both, at the request of the Customer. Where the Customer permits, either by act or omission, Les Kelly Panel & Paint to carry out work whether that be the supply of goods, the performance of services or both, for the

Customer, such permission is prima facie evidence of the Customer's acceptance and agreement to be bound by these Terms & Conditions without limitation or waiver.

Les Kelly Panel & Paint is a signatory to the Motor Vehicle Insurance and Repair Industry Code of Conduct. These terms and conditions are in alignment with the Code.

3. QUOTATIONS

If Les Kelly Panel & Paint provides or has provided any quotation to a Customer for Goods and/or Services ("**Quotation**"):

- 3.1 these terms and conditions apply to the Quotation;
- 3.2 the price in the Quotation shall be Les Kelly Panel & Paint's current price as at the date of the Quotation and the price actually payable for the Goods and/or Services shall be Les Kelly Panel & Paint's current price as at the date of the Customer's acceptance of the Quotation;
 - 3.2.1 Any Quotation provided by Les Kelly Panel & Paint is an estimate based on an external inspection only;
 - 3.2.2 If Les Kelly Panel & Paint find additional damage or issue after conducting an internal inspection;
 - 3.2.2.1 the Customer will be notified of the additional cost of the additional Goods or Services required;
 - 3.2.2.2 Les Kelly Panel & Paint will carry out the required work after confirmation from the Customer as to the extra cost for Goods and Services.
- 3.3 the Quotation will detail any charges for delivery of the Goods and/or Services;
- 3.4 subject to paragraph 3.2, the Quotation shall remain valid for acceptance by the Customer for thirty (30) days after the date of the Quotation;

4 ORDERS

If the Customer has made an order for Goods and/or Services without a Quotation provided by Les Kelly Panel & Paint ("**Order**"):

- 4.1 the Order is subject to acceptance in writing by Les Kelly Panel & Paint; and 4.2 the price actually payable for the Goods and/or Services is Les Kelly Panel & Paint's current price as at the date of Les Kelly Panel & Paint's acceptance of the Order; and 4.3 for some Goods and/or Services Les Kelly Panel & Paint requires a deposit to be paid by the Customer at the time an Order is made. The details of the deposit will be provided by Les Kelly Panel & Paint to the Customer in writing or verbally and is usually the amount for which the parts are costing within the job; and
- 4.4 Les Kelly Panel & Paint reserve the right to cancel an Order if payment is not made at the time of the Order by the customer; and
- 4.5 Les Kelly Panel & Paint further reserve their right to seek payment for an Order from a Customer if the Customer decides that they no longer want to proceed with an Order.

5 VARIATION OR CANCELLATION

After the Customer's acceptance of a Quotation or Les Kelly Panel & Paint's acceptance of an Order:

5.1 no change in the specification of Goods and/or Services shall bind Les Kelly Panel & Paint, unless Les Kelly Panel & Paint expressly agrees to the change in writing; and
5.2 if the Customer cancels the Order or Quotation after acceptance, the Customer

will pay Les Kelly Panel & Paint any loss, damage or expense incurred by Les Kelly Panel & Paint in relation to the supply or proposed supply of the Goods and/or Services whether by Order or Quotation.

6 CHARGES AND TAXES

6.1 Unless otherwise expressly stated, the price of Goods and/or Services excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, external Sublet, delivery, export and similar charges, and all sales, GST, excise or other taxes, and the Customer shall pay and indemnify Les Kelly Panel & Paint for those charges or taxes. If Les Kelly Panel & Paint expressly agrees in writing that the price includes any of these charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.

6.2 The Customer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods and/or Services supplied and hereby indemnifies and holds harmless Les Kelly Panel & Paint from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

6.3 For the avoidance of any doubt the price for Goods and/or Services does not include the cost of any installation, commissioning or training requested by the Customer.

7 PAYMENT

7.1 The Customer must pay for Goods and/or Services prior to the collection of the Goods or the Customer's vehicle, or if agreed to in writing by Les Kelly Panel & Paint, within five (5) days after the date of the invoice issued by Les Kelly Panel & Paint for the Goods and/or Services.

7.2 If payment is not made by the due date for payment, the Customer shall be liable to pay to Les Kelly Panel & Paint, interest at the rate of two percent (2%) per month until paid. This will not negative or waive any other rights of Les Kelly Panel & Paint.

7.3 Whilst any moneys are owed by the Customer to Les Kelly Panel & Paint, the Customer is not entitled to set off any amounts owed by Les Kelly Panel & Paint or withhold any payments to Les Kelly Panel & Paint.

7.4 Les Kelly Panel & Paint is entitled to recover from the Customer, in addition to the price, any GST on the supply of the Goods and/or Services.

7.5 Les Kelly Panel & Paint is entitled to recover from the Customer, in addition to the price of Goods and/or Services, any and all losses, expenses, costs (including legal fees) and disbursements, consequent upon Les Kelly Panel & Paint seeking to execute or enforce a right under these Terms & Conditions and/or any guarantees related to the Customer's account, and all such amounts are recoverable from the Customer by Les Kelly Panel & Paint as a liquidated debt.

8 DELIVERY

8.1 Les Kelly Panel & Paint will use all reasonable endeavours to deliver the Goods and/or Services on or before the Delivery Date, but:

- 8.1.1 the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire, force majeure or any cause beyond the reasonable control of Les Kelly Panel & Paint; and
- 8.1.2 Les Kelly Panel & Paint will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise, directly or indirectly arising from the Goods and/or Services not being delivered by the Delivery Date for any reason.
- 8.2 The Customer will be charged for all costs related to delivery and such costs will be detailed on a tax invoice provided to the Customer.
- 8.3 Les Kelly Panel & Paint may, with the agreement of the Customer, deliver Goods and/or Services to the Customer in instalments and in which Les Kelly Panel & Paint may separately invoice the Customer for payment for each delivery instalment (each of which shall be taken to be the subject of a separate and distinct contract between the parties).
- 8.4 Any Goods and/or Services sought to be returned will only be accepted with the prior written approval of Les Kelly Panel & Paint and may be subject to a 20% handling/restocking fee.
- 8.5 Goods which have been specifically manufactured by Les Kelly Panel & Paint for the Customer or altered by the Customer cannot be returned simply because the Customer has changed their mind in respect of those Goods.

9 RISK AND PROPERTY IN GOODS

- 9.1 For the purposes of the PPSA (as amended from time to time) "Goods" means any and all present and after acquired goods supplied by Les Kelly Panel & Paint to the Customer;
- 9.2 The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Customer from the time of delivery of the Goods (the carrier of the Goods shall be taken to be the agent of the Customer even if engaged or paid by Les Kelly Panel & Paint).
- 9.3 Les Kelly Panel & Paint retains full title to the Goods until Les Kelly Panel & Paint receives payment in full for the Goods and all other amounts owed by the Customer to Les Kelly Panel & Paint.
- 9.4 Until all such monies have been paid:
 - 9.4.1 Les Kelly Panel & Paint has the right to call for or recover possession of the Goods (for which purpose Les Kelly Panel & Paint employees or agents may enter onto the Customer's premises) and the Customer must deliver up the Goods if so directed by Les Kelly Panel & Paint;
- 9.5 The Customer:
 - 9.5.1 agrees that the relationship between the Customer and Les Kelly shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to
 - 9.5.2 has the right to resell the Goods in the ordinary course of the Customer's business as Les Kelly Panel & Paint fiduciary agent but must not otherwise dispose of or encumber the Goods in any way;
 - 9.5.3 shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to Les Kelly Panel & Paint in their original state;
 - 9.5.4 agrees that if the Goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of

resultant product shall become and be deemed to be owned in common by Les Kelly with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and

9.5.5 will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) on trust for Les Kelly Panel & Paint and shall pay the proceeds into a separate fiduciary account to be held on trust for Les Kelly Panel & Paint until accounted for, to Les Kelly Panel & Paint at the demand of Les Kelly Panel & Paint.

9.6 To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause to create, for the benefit of Les Kelly Panel & Paint, a Purchase Money Security Interest in the Goods;

9.7 The Customer agrees that Les Kelly Panel & Paint may register any personal property security interest created by these Terms & Conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by Les Kelly Panel & Paint in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on Les Kelly Panel & Paint, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that Les Kelly Panel & Paint otherwise agrees in writing.

10 LIABILITY

The Customer agrees that:

10.1 the Customer must satisfy itself as to the truth and accuracy of, and may not rely for any purpose upon any technical or other advice or information provided by or on behalf of Les Kelly Panel & Paint in connection with Goods and/or Services provided;

10.2 except to the extent prohibited by law (and subject to clause 12.1 herein), the only remedy of the Customer against Les Kelly Panel & Paint for any loss, damage or liability whether in contract, tort, negligence or otherwise of the Customer in connection with these Terms & Conditions and/or Goods and/or Services, Les Kelly Panel & Paint's supply of the Goods and/or Services, or Les Kelly Panel & Paint's failure to supply the Goods and/or Services to the Customer, shall be limited to Les Kelly Panel & Paint, at its option, replacing or repairing any Goods supplied and/or re-performing the Services; and

10.3 Les Kelly Panel & Paint shall otherwise have no liability to the Customer whether in contract, tort, negligence or otherwise.

11 DEFECTIVE GOODS & SERVICES

11.1 Within ten (10) days after the delivery of the Goods and/or Services from Les Kelly Panel & Paint, the Customer shall complete any inspection or testing it deems necessary to confirm that the Goods and/or Services comply with these Terms & Conditions or any Order or specifications and notify Les Kelly Panel & Paint in writing of the extent to which the Goods and/or Services do not comply with the Terms & Conditions or any Order or specifications.

- 11.2 The Customer shall not use the Goods and/or Services (other than to the extent reasonably necessary for inspection and testing) before the Customer completes inspection and testing and satisfies itself that Goods and/or Services comply with the Terms & Conditions or any Order or specifications, or, if the Customer notifies Les Kelly Panel & Paint in writing that the Goods and/or Services do not comply with the Terms & Conditions or any Order or specifications, until Les Kelly Panel & Paint has had a reasonable opportunity to inspect and test the Goods and/or Services after Les Kelly Panel & Paint receives that notice.
- 11.3 If the Customer does not comply with clause 11.1 or 11.2, the Customer shall be taken to have unconditionally accepted the Goods and/or Services.

12 Les Kelly Panel & Paint WARRANTY

- 12.1 This warranty is given by Les Kelly Panel & Paint in addition to other rights and remedies arising under Australian Consumer Law, *Competition and Consumer Act 2010, Schedule 2*
- 12.2 During the period of one year from the Delivery Date, Les Kelly Panel & Paint will replace or repair (at Les Kelly's discretion) any defective Goods and/or Services without charge so long as the defect does not arise from:
- 12.2.1 Improper adjustment, operation, or use, of the Goods and/or Services by any other party than Les Kelly Panel & Paint;
 - 12.2.2 Any modification or adaptation of, or addition to, the Goods and/or Services by any other party than Les Kelly Panel & Paint;
 - 12.2.3 Misuse of the Goods and/or Services by any other party than Les Kelly Panel & Paint;
 - 12.2.4 Operation contrary to specifications or instructions of use as prescribed by the manufacturer or Les Kelly Panel & Paint; or
 - 12.2.5 Inadequate maintenance or storage of the Goods and/or Services.

13 CHARGING CLAUSE

- 13.1 To secure payment of all moneys which are or may become payable by the Customer to Les Kelly Panel & Paint, the Customer hereby charges as legal and/or beneficial owner and as trustee of any trust in favour of Les Kelly Panel & Paint all the Customer's right, title and interest in land (held now or in the future) with the due payment of all of those moneys. The Customer acknowledges that Les Kelly Panel & Paint may register a caveat or caveats over the Customer's land in respect of this charge.
- 13.2 If the Customer is a trustee of any trust, or becomes the same:
- 13.2.1 it is bound by these Terms & Conditions and charges the Customer's land as trustee;
 - 13.2.2 warrants that it is a proper exercise of the Customer's authority and power under the trust instrument and at law to trade with Les Kelly Panel & Paint and to charge the Customer's Land in accordance with these Terms & Conditions.
- 13.3 Upon demand by Les Kelly Panel & Paint, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Les Kelly Panel & Paint to further secure the Customer's indebtedness to Les Kelly Panel & Paint and the Customer acknowledges by reason of this agreement to give a mortgage in favour of Les Kelly Panel & Paint and that Les Kelly Panel & Paint is an equitable mortgagee in respect of the Customer's Land.
- 13.4 Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit

manager or a duly authorised officer of Les Kelly Panel & Paint to be the Customer's lawful attorney to execute any such mortgage or other instrument.

14 DEFAULT, INSOLVENCY AND TERMINATION

If the Customer:

- 14.1 commits a substantial breach of the Terms & Conditions, including an unreasonable refusal to accept any Goods and/or Services or failing to pay for any Goods and/or Services, in accordance with the Terms & Conditions; or
- 14.2 informs any person it is insolvent, commits an act of bankruptcy or insolvency, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration, all monies owing by the Customer to Les Kelly Panel & Paint become immediately due and payable and Les Kelly Panel & Paint may, without affecting Les Kelly Panel & Paint other rights:
 - 14.2.1 immediately terminate the supply of the Goods and/or Services;
 - 14.2.2 refuse, suspend or withholds supply of any further Goods and/or Services;
 - 14.2.3 enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Customer), in which case the sale of those Goods shall be taken to be terminated and Les Kelly Panel & Paint shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
 - 14.2.4 terminate any credit arrangement with the Customer.

15 GOVERNING LAW

The laws of the State of Queensland shall apply to the Terms & Conditions and the Customer submits to the exclusive jurisdiction of the Courts of Queensland.

16 LIEN

- 16.1 The Customer acknowledges that Les Kelly Panel & Paint has a right to a lien (under general law and/or equity) over all property in Les Kelly Panel & Paint possession belonging to the Customer, including the Customer's vehicle and/or all items, of any description, in or attached to the Customer's vehicle, to secure payment of any or all amounts outstanding ("**Lien**").
- 16.2 The Customer agrees that Les Kelly Panel & Paint may, at its discretion, exercise the Lien in respect of any due and unpaid amounts outstanding by the Customer and may retain the Customer's vehicle and/or any items, of any description, in or attached to the Customer's vehicle until payment of the amounts outstanding by the Customer and Les Kelly Panel & Paint will be at liberty pursuant to clause 17 herein to sell any property of the Customer in Les Kelly Panel & Paint's possession; so as to recover part or all of the monies owed by the Customer to Les Kelly Panel & Paint.

17 ABANDONMENT

- 17.1 If any amounts outstanding have not been paid within six (6) calendar months of Les Kelly Panel & Paint providing notice to the Customer Les Kelly Panel & Paint

is exercising its right to a Lien over the Customer's property, including the Customer's vehicle and/or all items, of any description, in or attached to the Customer's vehicle, and Les Kelly Panel & Paint does not receive full payment from the Customer after making reasonable attempts to contact the Customer, Les Kelly Panel & Paint may sell the Customer's vehicle and/or all items, of any description, in or attached to the Customer's vehicle in accordance with any applicable legislation relating to the disposal of uncollected or abandoned goods and vehicles.

17.2 In the event that Les Kelly Panel & Paint sells the Customer's vehicle and/or items, of any description, in or attached to the Customer's vehicle, Les Kelly Panel & Paint will apply the proceeds in the first instance to the satisfaction of the amounts outstanding by the Customer and the costs of exercising the right of sale.

17.3 Any balance of the proceeds of the sale will be returned, where possible, to the Customer.

18 AUTHORITY IN RESPECT OF THE VEHICLE

18.1 The Customer authorises Les Kelly Panel & Paint to do every act, matter and thing that Les Kelly Panel & Paint considers desirable or necessary for Les Kelly Panel & Paint to provide the Customer with the Goods and/or Services in respect of the Customer's vehicle, including (but not limited to):

18.1.1 entering the Customer's vehicle; and

18.1.2 test driving the Customer's vehicle (including driving the Customer's vehicle to another location outside of Les Kelly Panel & Paint's premises).

18.2 The Customer authorises and agrees to the subletting contractor agreements in place between Les Kelly Panel & Paint and other companies.

18.2.1 Les Kelly Panel & Paint accept no liability for damage occurred to Customer's property, vehicle or Goods of the Customer when possession of same is with one of Les Kelly Panel & Paint's contractors.

18.3 Les Kelly Panel & Paint accept no liability or responsibility for property of the Customer or contents of the vehicle that is left in the Customer's vehicle whilst the vehicle is under Les Kelly Panel & Paint possession and control.

19 INSPECTION OF VEHICLE

19.1 Upon the Customer leaving a vehicle with Les Kelly Panel & Paint, the Customer is in agreement with Les Kelly Panel & Paint as to the current state of the vehicle, including any damage to the exterior and interior of the vehicle.

19.2 Les Kelly Panel & Paint will mark up the state of the vehicle upon receipt of the vehicle and the customer is bound to the initial mark up and subsequent additions to the mark up before Les Kelly Panel & Paint begin to carry out any work on the vehicle.

20 NON-WAIVER

20.1 Les Kelly Panel & Paint's failure to exercise any right under the terms and conditions or to insist on strict performance of any part of the terms and conditions does not operate as a waiver; and

20.2 a partial exercise of a right does not preclude any further or fuller exercise of that right.

21 SEVERANCE

If any part of these terms and conditions or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

22 CHILD SEATS & RESTRAINTS

- 22.1 If an employee of Les Kelly Panel & Paint removes a child seat and restraint for any reason in performing any service, Les Kelly Panel & Paint will not, under any circumstances, reinstall the child seat and restraint for the Customer. It is the Customer's responsibility to have the child seat and restraint re-installed by a Qualified Installer.
- 22.2 Les Kelly Panel & Paint bears no responsibility or liability for having removed the child seat and restraint from the Customer's vehicle.
- 22.3 Les Kelly Panel & Paint will not be liable for the cost of having the child seat and restraint re-installed by a Qualified Installer.

23 NOTICES

- 23.1 Notices required to be given by the Customer to Les Kelly Panel & Paint pursuant to these Terms & Conditions may be delivered to Les Kelly Panel & Paint:
 - 23.1.1 personally to Les Kelly Panel & Paint at 14 Commercial Street, Bundaberg QLD 4670; or
 - 23.1.2 sent by post to Les Kelly Panel & Paint at the same address
- 23.2 Notices will be taken as delivered when received by Les Kelly Panel & Paint.
- 23.3 Notices required to be given by Les Kelly Panel & Paint to the Customer pursuant to these Terms & Conditions may be delivered:
 - 23.3.1 by post to the Customer's last known address (to which the postal service rule will apply); or
 - 23.3.2 by facsimile to the Customer's last known facsimile number (and will be taken to be received when a successful facsimile transmission is notified by Les Kelly Panel & Paint fax machine); or
 - 23.3.3 by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of Les Kelly Panel & Paint sending the email to the email address provided by the Customer).