

TERMS & CONDITIONS OF SUPPLY

1. APPLICATION OF THESE TERMS AND CONDITIONS

These terms and conditions ("Conditions") apply to all supplies made by the Supplier to the Purchaser. Where the Purchase Order purports to be made on or subject to terms and conditions other than these Conditions, the Purchaser agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Supplier expressly agrees otherwise in writing.

2. QUOTATIONS, PURCHASE ORDERS AND FORECASTS

Any quotation made by the Supplier is not an offer to sell and no Purchase Order given in pursuance of any quotation will bind the Supplier unless and until such Purchase Order is accepted by the Supplier in its absolute discretion. All quotations are subject to withdrawal or variation by the Supplier at any time prior to acceptance of a Purchase Order.

If the Purchaser has provided the Supplier with a forecast of future requirements it acknowledges that the Supplier will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources so as to be able to meet those forecast requirements. In the event that any such forecast is materially inaccurate the Supplier shall be entitled to invoice the Purchaser for all costs, expenses or losses which result from the Supplier having relied on the inaccurate forecast. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

The Supplier shall also be entitled to invoice the Purchaser for all finished Goods made to forecast and not taken by the Purchaser within 2 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

3. TERMS OF PAYMENT

Terms of payment are cash with order unless COD or credit has been approved by the Supplier. If credit is satisfactorily established, terms are strictly net 30 days from the end of the month during which the Invoice was issued, unless otherwise agreed to by the Supplier in writing. Any credit limit determined by the Supplier, in its absolute discretion, and as varied from time to time by the Supplier, shall apply to all purchases of Goods from the Supplier or any of its related bodies corporate.

If payment is not made in accordance with the above terms the Supplier is entitled to calculate and charge interest at a rate of 15% per annum calculated daily on any amounts outstanding (in addition to any other rights that the Supplier has on a default).

Notwithstanding the above, if the Purchaser is not resident in Australia or is not an Australian company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the Goods outside Australia, prices quoted are "free alongside ship", unless otherwise agreed in writing by the Supplier.

4. DEFAULT

- If:
- the Purchaser defaults in payment;
 - an application is made or resolution passed to wind up the Purchaser, or the Purchaser becomes bankrupt or insolvent, or a liquidator, receiver or administrator is appointed to the Purchaser, or the Purchaser makes or proposes to make any arrangement with its creditors or ceases to carry on business;
 - the Purchaser breaches any other provisions of these Conditions,
- then the Supplier, without prejudice to any other remedy that may be available to the Supplier, has the immediate right to do any one or more of the following:
- demand that the Purchaser immediately account to the Supplier for any money or property owed to the Supplier under these Conditions or on any other account (and the Purchaser shall comply with such demand);
 - withhold further deliveries;
 - re-take possession of Goods in relation to which title has not passed to the Purchaser under clause 6, without notice to the Purchaser and for that purpose the Purchaser authorises the Supplier to enter upon any premises occupied by the Purchaser or any other place where such Goods are stored free from trespass; and
 - terminate the Contract and recover from the Purchaser, at a minimum, reasonable compensation for materials purchased and ordered and labour expended in complying with the Purchase Order.

5. DELIVERY AND RISK

While the Supplier will use all reasonable endeavours to deliver by the date specified in the Purchase Order, it does not guarantee delivery on that date and is not liable for any Loss resulting from late or early delivery. Delivery of the Goods shall be deemed to be effected when the Goods are unloaded from the delivery vehicle or placed on the Purchaser's or the Purchaser's agent's nominated carrier. If no date for delivery has been specified, then the Goods shall be supplied to the Purchaser and the Purchaser shall receive the Goods as soon as practicable after the Purchase Order has been accepted by the Supplier and the Goods have been manufactured. Risk in the Goods passes to the Purchaser at the time of delivery.

6. PASSING OF PROPERTY

The Purchaser agrees that title to and property in the Goods is retained by the Supplier until payment by the Purchaser of the purchase price for the Goods and all other Amounts Outstanding ("Unpaid Goods"). The Purchaser must store the Unpaid Goods so that they are identifiable as those supplied by the Supplier, and ensure they are properly stored and adequately insured.

If the Purchaser sells or purports to sell any of the Unpaid Goods supplied by the Supplier in which property has not passed to the Purchaser, then the Purchaser does so as a fiduciary for the Supplier. The proceeds of such sale are the property of the Supplier to the extent of any money owed to it by the Purchaser and are to be held on trust for the Supplier. The Purchaser must account to the Supplier for that portion of the proceeds of sale on demand.

7. CANCELLATIONS

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery, facsimile or email. The Purchaser is liable to reimburse the Supplier for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received by the Supplier, together with the Supplier's loss of profit resulting from the cancellation of the Purchase Order.

8. FORCE MAJEURE

Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these Conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage, shortage of raw materials, or breakdown in machinery. During the continuance of such circumstance the obligations of the party affected (other than an obligation to pay money), to the extent they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.

9. SUPPLIER'S LIABILITY

- All representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied in these Conditions are expressly excluded to the fullest extent permitted by law. The Purchaser acknowledges that neither the Supplier nor any person acting on the Supplier's behalf has made any representations or given any promise or undertaking in relation to the quality of the Goods, their fitness for purpose or their usage.
- Nothing in these Conditions is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any applicable legislation (including the *Competition and Consumer Act 2010* (Cth)) into

the Contract, if such exclusion, restriction or modification would be void or prohibited by the legislation.

- To the extent that the Supplier breaches any condition or warranty implied into the Contract and which cannot be excluded, or breaches any condition or warranty expressly included in the Contract, then the Supplier's liability is limited to, and completely discharged by, at the Supplier's discretion, either:
 - replacement of the Goods that are the subject of the breach, or supply of equivalent goods;
 - payment of the cost of replacing the Goods or acquiring equivalent goods;
 - repair of the Goods; or
 - payment of the cost of having the Goods repaired,and in the case of services, to:
 - supply of the services again; or
 - payment of the cost of having the services supplied again.
- Subject to (b) and (c) above, the Supplier is not liable to the Purchaser (or to any third party claiming through the Purchaser) for any Loss caused by any act or omission of the Supplier, its employees or agent, and whether based on negligence or other tort, contract or otherwise.
- In no event shall the Supplier be liable for indirect or consequential losses (including loss of production, profit, goodwill or reputation).

10. DESCRIPTION AND SPECIFICATIONS

- Whilst every effort is made to ensure their accuracy the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, electronic communications or other descriptive matter provided by or on behalf of the Supplier represent the general nature of the items described therein and shall not form a part of any order or agreement or amount to any representation or warranty.
- The Purchaser warrants that any goods or other material, including any packaging or artwork manufactured, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Purchaser shall not infringe any Intellectual Property rights of a third party or breach any law. The Purchaser indemnifies the Supplier from and against any action that may be brought against or Loss suffered by the Supplier as a result of a breach of that warranty.
- The Supplier reserves the right to make any changes to designs, drawings or specifications supplied to the Supplier by the Purchaser, and/or Goods ordered by the Purchaser, which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Goods by the Purchaser.
- The Supplier does not warrant or guarantee that any Goods manufactured, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon any designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Purchaser will achieve any standard or performance or any capacity whatsoever.
- The Supplier will not be liable for any defect in the Goods arising from any designs, drawings, specifications or other information or material supplied to the Supplier by the Purchaser. Where the Purchaser approves any artwork or proofs submitted by the Supplier, the Supplier will not be liable for any errors or inaccuracies subsequently discovered.
- Any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods or their use or application is given in good faith and is believed by the Supplier to be appropriate and reliable. Any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Supplier.
- In addition to any right of lien which the Supplier may be entitled to by law, the Supplier will have a general lien over any designs, drawings, specifications or tooling supplied to the Supplier by or on behalf of the Purchaser which is in the Supplier's possession until all monies owing by the Purchaser to the Supplier on any account have been paid in full.

11. INTELLECTUAL PROPERTY

Subject to the remainder of this clause 11, all right, title and interest in and to any goods, materials or developments in which copyright or other Intellectual Property subsist created by or on behalf of the Supplier, created jointly with the Purchaser, or otherwise supplied by the Supplier to the Purchaser, shall vest absolutely in and remain the sole property of the Supplier. The supply of Goods shall imply a licence to the Purchaser to use the same but for no other purpose. The Purchaser undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any such Intellectual Property without the prior written consent of the Supplier. The Supplier acknowledges that the Purchaser retains all right, title and interest in and to Intellectual Property of the Purchaser supplied to the Supplier under any Contract. The Purchaser grants the Supplier a perpetual, irrevocable, royalty free licence under such Intellectual Property for the purpose of making all supplies contemplated by any Contract.

The Supplier makes no representation or warranty that the Goods supplied or the use of such Goods or items made from the Goods either alone or in conjunction with other goods will not infringe any Intellectual Property right. The Purchaser will notify the Supplier of any claim or suit involving the Purchaser in which such infringement is alleged and if the Supplier considers itself to be affected it will be entitled to control the defence of such infringement allegation.

12. ARTWORK, PRINTING

- Without limiting clause 11, the Purchaser indemnifies the Supplier from and against all claims, demands, suits and costs to which the Supplier may become wholly or partially liable by reason of any artwork required to be done in accordance with the Purchaser's specifications involving an infringement or alleged infringement of any Intellectual Property and any Loss that results therefrom.
- If the Purchaser supplies the Supplier with any artwork for use on or in conjunction with packaging supplied by the Supplier, then use or reproduction by the Supplier of that artwork is not to be construed as a warranty or representation that it complies with the relevant legislation (in Australia or elsewhere) in relation to labelling, and the Purchaser hereby indemnifies the Supplier in relation to any Loss arising as a result of the use or reproduction of such artwork.
- The Purchaser is responsible for providing the correct Global Trade Item Number (GTIN) in writing to the Supplier where this is applicable. If the Purchaser supplies the copy/artwork for the GTIN symbol, then the Purchaser must ensure substantial compliance with the specifications for such symbols contained in the most recent edition of the applicable Industry Guidelines for the Numbering and Barcoding of Trade Items. The Supplier will exercise reasonable care in printing the GTIN symbol but does not guarantee the accuracy or scannability of these symbols. No GTIN symbol can be considered defective if it is commercially scannable or is in substantial compliance with GTIN specifications at the time of manufacture. The Supplier's liability for manufacturing defects in GTIN symbols is limited to, at the Supplier's discretion, replacement of the packaging bearing the defective symbol or rectification of the symbol, with the manner of rectification at the Supplier's discretion.

13. TOOLING, MOULDS, DIES, DESIGNS ETC.

All dies, designs, sketches, negatives, photographs, plates, moulds, stereotypes, tooling, blocks and engravings commissioned or made available by the Supplier in connection with the supply of any Goods shall remain the property of the Supplier notwithstanding that a charge may be made for their recovery, creation, use, maintenance and storage.

14. QUANTITY AND QUALITY TOLERANCES

- (a) Each Purchase Order must satisfy the minimum run-size requirements of the Supplier. The quantity of the Goods delivered by the Supplier under the Purchase Order can vary by up to 10% of the quantity specified by the Purchaser in the Purchase Order (and by up to 30% on order quantities of less than 1000).
- (b) Where the Purchaser does not supply detailed colour specifications, the Supplier shall develop colour specifications and print the product accordingly to the Purchaser's general instructions. The Purchaser shall then either attend the Supplier's premises to view the production run and approve the colour specifications developed or alternatively the Purchaser shall be forwarded samples by mail for approval. In either case the Purchaser shall initial the samples approved. Subsequent production runs shall be based on the standards and specifications approved. Failure by the Purchaser to approve colour specifications will deny the Purchaser the right of objection in relation to the limits of colour variation developed by the Supplier for that run. Where the Purchaser has selected colour specifications for light, nominal and dark standards specifying the nominal colour reproduction and associated light and dark limits, the Purchaser will only have the right of objection to the nominal colours selected by him if such colours have been nominated using a colour system accepted by the Supplier.
- (c) Where the Purchaser supplies specifications to the Supplier, any Goods not varying in the specification stipulated by the Purchaser by more than the established industry tolerance shall be accepted by the Purchaser as complying with the Contract.

15. PRICE VARIATION

The price quoted by the Supplier is subject to variation at any time prior to the date of acceptance of the order upon written notice to the Purchaser. Without limitation, if the cost of wages, materials, energy or transport to the Supplier increases after the date of any written offer and/or price list and before delivery of the Goods or completion of the work specified in the Purchase Order, the Supplier may add a fair and reasonable amount to the price quoted to cover the increase and the Purchaser must pay the price as varied.

16. TAX AND DUTIES

Prices quoted by the Supplier are inclusive of all current taxes, except for GST (unless specifically stated otherwise). The Supplier may on 7 days notice in writing increase the price for all or any of the Goods to the extent required to pass through the impact on the Supplier of any new, revised or increased tax, duty or other government charge or scheme taking effect after the date of the Contract in accordance with the impact that such new or revised tax, duty, charge or scheme has on the Supplier's costs of producing and supplying the Goods. For clarity, the above shall apply even where prices are stated to be fixed or inclusive of taxes, as this refers to taxes and other government charges or schemes at levels existing as at the date of the Contract.

17. GOODS AND SERVICES TAX

If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to include GST payable by the Supplier in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

The parties agree that: (i) the parties must be registered persons within the meaning of the GST Law; (ii) the Supplier must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Law; and (iii) costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

18. CLAIMS

Any claim by the Purchaser arising out of the Contract must be made in writing and may be delivered by post, hand delivery, or email as soon as practicable after discovery by the Purchaser of the problem and in any event no later than 7 days after delivery of the Goods. The Purchaser must supply a sample, if requested, and information to the extent the Supplier can identify the product and the date of manufacture. The Supplier has the right at any time within 30 days after receipt of the claim to inspect the relevant Goods. If the Purchaser disposes of any of the Goods within the 30 day period, except with the written consent of the Supplier, all claims in respect of the Goods disposed of are deemed to have been waived by the Purchaser.

19. INSURANCE

Unless otherwise instructed by the Purchaser in writing or included in a written quotation or price list by the Supplier, insurance cover for the Goods in transit will not be arranged by the Supplier. Instructions for insurance cover will only be accepted in writing at the time the Goods are ordered. The Supplier is not obliged to give the Purchaser a notice referred to in Section 35 (3), *Sale of Goods Act 1923* (NSW) (or any equivalent legislation).

20. TRANSPORT

If the Purchaser requests delivery by means other than normally used by the Supplier, then the Purchaser must pay all additional costs associated with the means chosen. If, within 7 days after the Goods are available for dispatch, the Supplier is unable or finds it impractical to transport the Goods by the means chosen, the Supplier may transport the Goods by any means it considers suitable.

21. OTHER DELIVERY PROVISIONS

Delivery may be made in one or more lots and at different times and by separate deliveries or shipments. Each lot forms a separate Contract and must be accepted and paid for accordingly, notwithstanding any late delivery or non-delivery of any other lot. If the Supplier allows the Purchaser to nominate a delivery date, such date may not be more than 30 days after the expected date of manufacture of the Goods, as advised by the Supplier to the Purchaser.

If the Purchaser is unable or unwilling to accept delivery on or before the nominated delivery date, or if no delivery date is nominated and the Purchaser is unable to accept delivery when the Supplier gives notice that the Goods are available for delivery, then the Supplier will hold the Goods in stock for 7 days after which time it may, at its discretion: (i) continue to hold the Goods and charge the Purchaser for storage; (ii) invoice the Purchaser and deliver the Goods in accordance with prior arrangements, notwithstanding that the Purchaser's representative or agent is not present or is unwilling to accept the Goods; or (iii) treat the Contract as having been repudiated by the Purchaser and invoice the Purchaser for the full Contract price for the Goods and any other costs incurred by the Supplier less any amounts received by the Supplier from a bona fide sale of the Goods to a third party. The Supplier will deliver the Goods to the Purchaser's nominated store. The Purchaser must unload the Goods at the Purchaser's risk.

22. CONTAINERS

The Supplier retains the right of possession of any dividers, pallets or containers used for delivery of the Goods, and the Purchaser agrees to indemnify the Supplier in relation to the hire and replacement costs of any of these not returned in good order and condition to the Supplier within 30 days of delivery of the Goods, unless otherwise agreed in writing by the Supplier.

23. PPS LAW

- In this clause **PPSA** means the *Personal Property Securities Act 2009* (Cth) and terms defined in the PPSA have the same meaning in this clause (unless otherwise defined in this clause).
- (b) The Purchaser agrees that these Conditions constitute a security agreement for the purposes of the PPSA.
- (c) The Purchaser grants to VIA, the Supplier and each of its Related Bodies Corporate (each a "**Secured Party**"), a security interest in all Unpaid Goods and equipment supplied to the Purchaser by the Supplier and any proceeds in respect of those Unpaid Goods and equipment ("**Proceeds**") to secure the Amounts Outstanding. The Purchaser acknowledges that such security interest shall be held jointly and severally by the Secured Parties and agrees that such security interest may be enforced by any one or more of the Secured Parties. To the extent that any Secured Party is not a party to these Conditions, these Conditions shall take effect as a deed poll by the Purchaser in favour of that Secured Party and shall be enforceable by that Secured Party.
- (d) The Purchaser agrees that a Secured Party may register, in any manner it considers appropriate, any security interest on the Personal Property Securities Register which in its opinion is created by or contemplated under these Conditions and, for the avoidance of doubt, may include any or all of the Secured Parties as the secured party in such registration. The Purchaser agrees not to lodge any Amendment Demand with respect to any registration made by a Secured Party.
- (e) The Purchaser agrees, at its own cost, to do anything (such as obtaining consents, signing and producing documents and supplying information) which a Secured Party reasonably requires for the purposes of: (i) ensuring that any security interest is enforceable, perfected with the highest priority and otherwise effective; or (ii) enabling a Secured Party to apply for any registration, or give any notification, in connection with a security interest; or (iii) enabling a Secured Party to exercise rights in connection with a security interest.
- (f) The Purchaser agrees that until ownership of the Unpaid Goods has passed to the Purchaser under clause 6, it will not enter into any agreement or arrangement which gives rise to, or permits any other person to register, any security interest in respect of the Unpaid Goods or the Proceeds without the Supplier's prior written consent, and will not otherwise deal with the Unpaid Goods or Proceeds in a way that will or may prejudice any rights of a Secured Party under these Conditions.
- (g) To the maximum extent permitted by law, the Purchaser waives:
- (i) its rights to receive any notice or statement that is required by:
 - (A) any provision of the PPSA (including a notice of a verification statement); or
 - (B) any other law before a secured party exercises a right, power or remedy; and
 - (ii) any time period that must otherwise lapse under any law before a Secured Party exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse of time is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits a Secured Party from giving a notice under the PPSA or any other law

24. MISCELLANEOUS

- (a) Any of these Conditions may be varied in writing by the Supplier at any time by notice to the Purchaser.
- (b) The Purchaser may not exercise any right of withholding, deduction or setoff.
- (c) The Purchaser may not assign or novate any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- (d) The Purchaser agrees that the Supplier may apply payments to Amounts Outstanding as it sees fit, notwithstanding any contrary appropriation by the Purchaser.
- (e) Failure by the Supplier to insist on strict performance of any of these Conditions shall not be deemed a waiver thereof. The waiver by the Supplier of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or a breach of any other provision, or of any further breach of the same or any other provision of the Contract.
- (f) If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- (g) The Contract (including the details appearing on the accepted Purchase Order and any credit application and Invoice) constitutes the entire agreement between the Purchaser and the Supplier and no modification is binding in relation to the Contract unless agreed to in writing by the Supplier.
- (h) Any dispute arising out of the Contract is governed by the laws of the State or Territory of Australia where the Purchase Order was received by the Supplier and the Purchaser submits to the jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.
- (i) All costs and expenses incurred by the Supplier to remedy any breach by the Purchaser of the Contract or to enforce the Supplier's rights under the PPSA or the Contract shall be recoverable from the Purchaser in addition and without prejudice to the Supplier's right to damages for breach of the Contract.
- (j) The Purchaser will not divulge to any person the terms of the Contract or any information provided by the Supplier in relation to the Contract without the prior written consent of the Supplier, except as required by law or for the purposes of obtaining professional legal, financial or taxation advice.
- (k) The following words have the following meanings in these Conditions, unless the context requires otherwise:
- "**Amounts Outstanding**" means, at any time, all amounts owed by the Purchaser to the Supplier at that time whether arising under the Contract or otherwise;
 - "**Contract**" means the agreement between the Purchaser and the Supplier for the supply of the Goods on these Conditions and includes the details appearing on the Purchase Order accepted by the Supplier;
 - "**Conditions**" means the terms and conditions set out in this document;
 - "**Goods**" means all goods and/or services described in a Purchase Order/ Invoice;
 - "**GST**" has the same meaning as in the GST Law;
 - "**GST Law**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - "**Intellectual Property**" means any patent, registered design, trade mark, copyright or any other industrial or intellectual property rights;
 - "**Invoice**" means a written invoice from the Supplier to the Purchaser for the Goods;
 - "**Loss**" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property;
 - "**Purchase Order**" means a purchase order or alternative form of order or offer to purchase provided by the Purchaser to the Supplier;
 - "**Purchaser**" means the person (including its successors, personal representatives and permitted assigns) acquiring Goods from the Supplier as named in the credit application or an Invoice, and where this consists of more than one person the obligations in the Contract are deemed to be joint and several;
 - "**Related Body Corporate**" has the meaning given to that term in the *Corporations Act 2001* (Cth), and "**Related Bodies Corporate**" has a corresponding meaning;
 - "**Supplier**" means VIA or any of its Related Bodies Corporate as identified in any Invoice, and that entity's successors and assigns;
 - "**VIA**" means Visy Industries Australia Pty Ltd (ACN 004 337 615);