



TERMS AND CONDITIONS OF SALE

All Orders given to Vital Image Graphics (hereafter VIG), ABN 80 959 200 608 are subject to the following Terms and Conditions

1. Definitions and Interpretations

1.1 In these Terms and Conditions:

"Delivery Address" means the delivery address of the Customer stated in an Order, "Contract" means the contract resulting from the acceptance by VIG of an Order in accordance with clause 2.3;

"Credit Application Form" means VIG credit application form by which a Customer can apply for a credit account with AGS in respect of the sale of Goods;

"Customer" means any person who enters into a Contract with VIG for the sale and purchase of Goods;

"Delivery Time" means the time of delivery of the Goods either to the Delivery Address of the Customer or to the carrier of the Customer;

"GST" means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Loss" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental;

"Order" means an order placed with VIG for the sale and delivery of Goods

"Order Confirmation" means a written confirmation of the Order by VIG that may be in the form of an invoice provided to the customer by facsimile transmission or email or delivered to the Customer upon delivery of the Goods;

"Price" means the price for the Goods specified in the Order Confirmation, or the price set out in any specific quotations by VIG for the supply of Goods at a particular price, which quotation shall be open for acceptance within the period stated in a quotation or if no period is stated, within 30 days after the date of the quotation;

"Goods" means the goods supplied or to be supplied by VIG to the Customer from time to time pursuant to the Contract;

"Terms and Conditions" means these terms and conditions as amended from time to time by VIG

1.2 In these Terms and Conditions (including defined terms), unless the context otherwise requires:

(a) The singular includes the plural and vice versa and each gender includes each other gender;

(b) Headings are included for convenience only and do not affect the interpretation of these Terms and Conditions.

2. Formation of Contract of Sale of Goods

2.1 These Terms and Conditions supersede all previous terms and conditions imposed by VIG and may only be varied in writing by VIG.

2.2 Each Order will constitute an offer by the Customer to acquire Goods from VIG upon and subject to the Terms and Conditions and to the exclusion of all other terms and conditions and notwithstanding any qualifications of the Terms and Conditions (including any terms and conditions contained in any purchase Order or other document of the Customer) unless expressly agreed by VIG in writing. Any price lists or quotations given by VIG to a Customer are an invitation to the Customer to place an Order only.

2.3 A contract will only be made between VIG and the Customer for the sale and purchase of Goods if and upon the acceptance of the Order by VIG by the provision to the Customer or any Order Confirmation.

2.4 An Order may only be made by the Customer to VIG;

(a) In writing, by facsimile transmission or by electronic data interchange;

(b) By telephone, if within 3 business days of the placement of the Order, it is confirmed by a means outlined in (a).

2.5 The Contract resulting from the provision of the Order Confirmation cannot be cancelled by the Customer without VIG's written consent and VIG may at its discretion impose a reasonable cancellation charge.

2.6 Minimum order value of \$10.00 excluding GST applies to all orders. VIG may impose a service fee for any orders placed under the minimum order value.

3. Payment Terms

3.1 The Customer agrees to pay to VIG the Price in full upon the delivery of the Goods, unless the Customer has completed and returned a Credit Application Form and VIG has agreed to extend credit to the Customer, in which case the Customer agrees to pay the Price in full on or before the 30th day of the month following the date of invoice or otherwise agreed with VIG.

(a) Payment for the Customer's first Order shall be made in advance before shipment of Goods.

3.2 If VIG agrees to extend credit to the Customer, the Customer agrees to the terms stated in the Credit Application Form as terms and conditions of the Contract. Notwithstanding any credit terms given to the Customer, VIG may decline to sell Goods on credit to the Customer at any time without notice to the Customer.

3.3 Payments are to be made via cash, cheque, bank cheque, EFTPOS and Credit Card. American Express cards are not accepted and Visa/MasterCard incurs a 2% surcharge (incl. GST). Payments are to be made without deduction or set off, wether legal or equitable.

3.4 The Price is GST and freight/delivery charge exclusive unless stated otherwise. The Customer must pay to VIG any GST which VIG is liable to pay in respect of supplies made by VIG under these Terms and Conditions, at the same time and in the same manner as first payment is made for the supply to which the payment relates.

3.5 All financial institutions duty, stamp duty, Government charges, or direct costs of any kind associated with the operation of the customer's account will be charged to the customer. Furthermore, the customer will be charged a fee of \$100 for each dishonoured cheque.

3.6 Prices, fees and charges are subject to change without notice.

3.7 Unless otherwise stipulated, all quotes/prices are in Australian Dollars (AUD).

4. **Interest** will be charged on all overdue accounts at the rate prescribed by the Queensland Law Society (Standard contract default rate) from the due date to the date that the account is paid in full and should the account be referred to a collection agency the Applicant shall pay a 15% collection fee plus all legal costs on an indemnity basis.

5. Title and Risk

5.1 The Customer acknowledges and agrees that no title to the Goods shall pass to the Customer until payment in full of all monies owed to VIG has been received;

5.2 Risk of Loss or damage to the Goods will pass to the Customer at the time of dispatch from VIG's nominated warehouse. VIG shall not be responsible for any loss or damage of Goods in transit. Insurance for Goods in transit to the Customer will not be arranged by VIG. The Customer shall be responsible for the insurance of Goods in transit, which insurance shall take account of these conditions.

5.3 Until the Price has been paid in full:

(a) Legal ownership of Goods shall remain with VIG

(b) VIG may enter the Customer's premises (or any premises where the Goods are located) without notice and without liability for trespass or any resulting damage and may retake possession of Goods. All costs and expenses incurred by VIG as a result in taking action to retake possession of Goods, together with transportation and storage charges, must be paid by the Customer to VIG on demand.

(c) VIG may keep or resell any repossessed Goods

(d) If the Customer resells Goods without first having paid VIG for them, the Customer shall hold that part of the proceeds of the sale which represents the invoiced price of Goods in a separate identifiable account as the beneficial property of VIG and shall pay the amount to VIG on request

(e) Notwithstanding anything contained in sub clauses 5.3 (a)-(d), VIG shall be entitled to maintain its legal rights against the Customer for the Price of the Goods. The Customer acknowledges and agrees that VIG may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Customer waives its right under s 157 of the Personal Property Securities ACT 2010 PPSA to receive notice of any verification of the registration. If the Customer defaults in the performance of any obligation owed to VIG under these Terms and Conditions or any other agreement with VIG to supply Goods to the Customer, VIG may enforce its security interest in any Goods by exercising all or any of its rights under these terms of the PPSA. To the maximum extent permitted by law, the Customer and VIG agree that the following provisions of the PPSA do not apply to the enforcement by VIG of its security interest in the Goods: sections 95, 125, 130, 135, 142 and 143.

6. Security and Charge

Despite anything to the contrary contained herein of any other rights which VIG may have howsoever:

(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to VIG or VIG's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that VIG (or VIG's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) Should VIG elect to proceed in any manner in accordance with the clause and/or its sub-clause, the Customer and/or Guarantor shall indemnify VIG from and against all VIG's costs and disbursements including legal costs on any indemnity basis. The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint VIG or VIG's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause



7. Credit Limit

The grant of any credit limit or facility is an indication only of VIG's intention at that time. VIG may at any time or at its discretion vary and/or withdraw any credit limit or facility without liability to VIG or any other party.

8. Delivery

8.1 Any timeframes quoted by VIG for the delivery of Products are estimates only.

8.2 VIG shall not be liable for delay or any failure or inability to deliver. VIG shall not be liable for any loss or damage whatever due to failure by VIG to deliver the goods (or any of them) promptly or at all;

8.3 The failure of VIG to deliver shall not entitle the Customer to treat this contract as repudiated;

8.4 VIG reserves the right to withdraw an Order Confirmation at any time before the Delivery Time and will not be liable for any loss whatsoever arising from its failure to deliver any or all of the Goods.

8.5 Any term of the Contract relating to the quantity of Goods is not the essence of the Contract. VIG reserves the right to make partial deliveries against an Order and to invoice each partial delivery separately and the Customer cannot reject Goods on the basis of partial delivery.

8.6 Where Goods remain in the possession of VIG after the Delivery Time (including where the Customer fails for whatever reason to take delivery of the Goods), VIG is entitled to charge the Customer for all Loss occasioned by the Customer not accepting delivery together with any costs and Loss in respect of the carriage, care and custody of the Goods.

8.7 Unless otherwise agreed by VIG, all Goods will be delivered to the Delivery Address.

8.8 The Customer must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or agreed period for delivery to accept delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.

8.9 VIG may arrange for the storage and carriage of Goods by carriers, contractors or sub-contractors. Notwithstanding any specific instructions given by the Customer as to the mode of carriage of Goods, in the exercise of its absolute discretion VIG may have any Goods carried or forwarded by any method which it deems fit.

8.10 Unless otherwise agreed in writing by VIG from time to time, the cost of freight of Goods from the VIG warehouse shall be paid by the Customer.

8.11 Unless otherwise specified in a quotation, Goods shall be packed in VIG standard packing. The cost of any special packing and packing materials required by the Customer shall be at the Customer's expense.

9. Inspection, Acceptance of Goods and Customer's obligations

9.1 The Customer must inspect the Goods within 2 business days of the Delivery Time and if no inspection is so made, is deemed to have accepted the Goods.

9.2 The Customer has no claim for shortages, defects or any Loss in respect of Goods apparent on inspection unless:

(a) A complaint is made to VIG within 3 business days of the Delivery Time specifying the shortage or defect; and

(b) VIG is, after receipt of the complaint, permitted to inspect the Goods to investigate the complaint.

9.3 If a complaint is not made to VIG in accordance with clause 5.2, the Goods delivered will be deemed to be in accordance with the Contract, and VIG will not be held liable for any future Losses regarding the use or application of the Goods, and the Customer is bound to pay for them accordingly.

9.4 VIG shall not be under any obligation to accept Goods returned by the Customer. VIG will only accept the return of Goods from the Customer where:

(a) The Customer has complied with clause 5.2 and VIG is satisfied as to the claim by the Customer; and

(b) The Goods are returned to VIG in the same condition as when first delivered to the Customer.

10. Cancellations and Returns

10.1 The Customer shall at no time cancel the whole or part of any order placed without VIG's prior approval. The Customer shall not return any Products without first providing to VIG and original proof of purchase.

10.2 Where the Customer has ordered incorrect Goods, an incorrect item number for Goods is used, an incorrect unit of issue or pack size is Ordered, an Order exceeds the Customer's requirements, an incorrect account number is used, or an Order is duplicated, the Customer may after receiving the written authority from VIG, return the Goods to VIG subject to the Goods being returned in the same condition as when first delivered to the Customer and subject to the Customer bearing the freight costs of the delivery and return of the Goods.

10.3 Notwithstanding any other provisions of these Terms and Conditions, the Customer shall not return any products which have been custom made, custom cut, custom processed or custom acquired.

10.4 The Customer shall in cases pay to VIG a restocking fee of 10% of the gross value of all returns up to a maximum value of \$50

10.5 Where Goods are returned to VIG in accordance with the above provisions VIG may issue a credit note in respect of any amounts paid by the Customer in respect of those Goods, less restocking fee and relevant freight costs.

11. Exclusions

11.1 The Customer shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice given by or on behalf of VIG shall be accepted at the Customer's risk.

11.2 VIG shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of Products) which are not precisely and accurately communicated in writing to VIG prior to the Customer entering into a sale contract.

12. Limitation of Liability

12.1 Legislation such as the Competition and Consumer ACT 2010 (Cth) may imply into these Terms and Conditions warranties or conditions or impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions.

12.2 All other conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are excluded to the extent permitted by law.

12.3 In the event that VIG breaches its obligations referred to in clause 12.1, to the extent allowed by law, its liability is limited to any one or more of the following, at its election:-

(a) The replacement of the Goods or the supply of equivalent goods;

(b) The repair of the Goods;

(c) The payment of the cost of replacing the goods or acquiring equivalent goods; or

(d) The payment of the cost of having the goods repaired.

12.4 The total liability of VIG under these Terms and Conditions is, to the extent permitted by law, expressed in this clause 12 and VIG will under no circumstances be liable to the Customer for any Loss incurred by the Customer or any other party resulting directly or indirectly out of the supply by VIG to the Customer or out of any breach of VIG under these Terms and Conditions or out of the negligence of VIG.

12.5 Nothing in these Terms and Conditions shall exclude or modify any conditional warranty implied by law where to do so would render these Terms and Conditions void.

12.6 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

12.7 The Customer agrees to limit any claim it makes to the cost of or of acquiring equivalent products.

13. Force Majeure

13.1 VIG shall not be deemed to be in default or breach of any contract as a result of Force Majeure. Force Majeure shall include any cause beyond the reasonable control of VIG.

14. Defaults

14.1 Upon the appointment of an Administrator, Receiver, Liquidator or Trustee in Bankruptcy to the Customer, VIG may by notice to the Customer, at its option and without prejudice to another right it may have, suspend or terminate an Order, cease further deliveries and may retain any monies paid by the Customer in relation to the Order and apply such monies against any loss or damage incurred by it in relation to the default by the Customer.

15. Severability

15.1 Any part of these Terms being whole or part of a clause shall be capable of severance without affecting any part of these Terms.

16. **Notice:** The Customer agrees that it shall be deemed to have notice of any change to the Terms and Conditions and be bound by any subsequent versions of these Terms and Conditions as they appear on the website www.vitalimage.com.au whether or not the Customer has actual notice thereof. A copy of any subsequent of these Terms and Conditions may also be obtained, by request, by telephone or email.

17. General

17.1 These Terms and Conditions take effect, are governed by and will be construed in accordance with the laws of the State of Queensland, Australia.

17.2 These Terms and Conditions are subject to change without notice.

17.3 The parties agree that any action arising out of, or relating to these terms may only be brought by the court of competent jurisdiction in the State of Queensland, Australia.

17.4 If we do not act in relation to a breach by you of these terms and conditions, this does not waive VIG's right to act with respect to subsequent or similar breaches.

17.5 You may not assign or transfer any rights or benefits you may receive under these terms and conditions to any other person or entity without the prior written consent of VIG.

17.6 In reselling, maintaining or installing Goods, the Customer is not VIG's agent or the agent of the manufacturer of the Goods.

Signature: _____ Name: _____ Date: _____

Please retain one copy and send signed copy to Vital Image Graphics, 21 Panorama Drive, Glenvale Qld 4350 or fax to 07 4659 0353

Vital Image Graphics

ABN 80 959 200 608

21 Panorama Drive, Glenvale, Queensland Australia

T 07 4633 2380

F 07 4659 0353