

## Visualise™ Terms and Conditions.

### 1. Interpretations and definitions.

1.1 in these Terms:

"ACL" means the Competition and Consumer Act 2010 (Cth);

"Goods" means all goods and services including any inventory purchased and/or provided by Visualise™ to the Customer;

"Customer" means a person, firm or corporation which requests or purchases Goods from Visualise™;

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

"Visualise™" includes any company within Visualise™ including Visualise™ Pty. Ltd.(ABN 79 006 420 515); and

"Terms" means these Terms and Conditions.

1.2 in the interpretation of the Terms unless the contrary intention appears:

1.2.1 headings are for convenience only and do not affect the interpretation of the Terms.

1.2.2 the words 'includes' or 'including' will not limit whatever follows;

1.2.3 a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa;

1.2.4 a reference to any gender includes a reference to all other genders; and

1.2.5 a reference to any legislation includes a reference to any modification or re-enactment.

### 2. Application of terms.

2.1 the Customer agrees that these Terms and Conditions of Sale (Terms) shall apply to all orders or purchases of Goods by the Customer and to all Goods supplied by Visualise™ to the Customer.

2.2 if the Customer comprises more than one person, the persons shall be jointly and severally liable for their obligations under these Terms.

2.3 these Terms may only be varied in writing by Visualise™.

### 3. Quotations.

3.1 all quotations and tenders by Visualise™ for the sale of Goods to the Customer shall be valid for acceptance by the Customer for thirty (30) days from the date of issue of the quotation or tender to the Customer.

3.2 all orders made by the Customer, shall be in writing either in the form of an official Visualise™ order or other document signed by the Customer.

3.3 unless in writing to the contrary, all quotations and tenders by Visualise™ to the Customer shall exclude all fees, costs and charges for: Transportation Packing; Crating; Insurance; Delivery; Taxes, including Goods and Services Tax; Duties; Supply or installation of electrical feeds; and all permits, engineers computations and statutory requirements.

### 4. Delivery.

4.1 if Visualise™ is unable to effect delivery or provision of the Goods to a Customer through circumstances beyond the control of Visualise™, it may cancel the Customer's order by notice in writing to the Customer and the Customer agrees that Visualise™ will be under no liability to the Customer or any third party for any damage, loss or other liability resulting from such cancellation.

4.2 in the event that Visualise™ finds problems at the premises where the Goods are to be delivered or installed which cause additional costs to be incurred by Visualise™ and such problems were not advised by the Customer to Visualise™ before or at the time of quotation, the Customer agrees to be liable to Visualise™ for any costs associated with such problems.

4.3 for the purposes of 4.2, additional costs shall include, but not be limited to, excessive rock or sub-standard soil conditions in excavation sites, lack of structural integrity, or conditions imposed by statutory authorities or third parties.



- 4.4 Visualise™ shall use all reasonable efforts to deliver and where applicable install the Goods to the Customer's specified location by the agreed date.
- 4.5 Visualise™ will not be liable for any loss, damage or other liability whatsoever arising either directly or indirectly from a delay in delivery or installation by Visualise™ or its agents.

## **5. Payment.**

- 5.1 Visualise™ may, at its discretion, require payment by the Customer of a deposit prior to the commencement of any work by Visualise™ pursuant to a quotation or tender.
- 5.2 the Customer agrees that Visualise™ is under no obligation to commence work on any order until receipt by Visualise™ of the payment described in 5.1.
- 5.3 the Customer shall pay the balance of the quotation or tender within thirty (30) days of the date of invoice by Visualise™ to the Customer.
- 5.4 the payment by the Customer to Visualise™ in accordance with 5.3 shall be free of all and any deductions by the Customer.
- 5.5 the Customer agrees that Visualise™ is entitled to invoice the Customer for progress claims and that the Customer shall pay such progress claims within thirty (30) days of invoice of the progress claims.
- 5.6 in the event that the Customer fails to make payment in accordance with 5.3 or 5.5, the Customer shall pay to Visualise™ interest at the penalty interest rate for the time being fixed under s.2 of the Penalty Interest Rates Act 1983 (Vic), together with all costs, charges and expenses (including legal costs on a solicitor-client basis) incurred by Visualise™ in the recovery by Visualise™ of any overdue amount from the Customer.
- 5.7 in the event that the Customer fails to provide delivery instructions within fourteen (14) days of a request by Visualise™ for such information, Visualise™ shall be entitled to charge the Customer the reasonable costs associated with storage of the Goods pending delivery.
- 5.8 all invoices and/or claims for payment are covered under the relevant legislation for construction industry security of payment applicable to the state or territory in which supply was made.
- 5.9 accepted Visualise™ online payment methods are direct debit and PayPal.

## **6. Retention of title.**

- 6.1 neither ownership of nor property in the Goods sold by Visualise™ passes until the Customer has paid to Visualise™ all monies owing by the Customer on any account.
- 6.2 until payment of all monies owed by the Customer to Visualise™ on any account, the Customer holds the Goods as fiduciary bailee and agent for Visualise™ and must keep the Goods physically separate from all other goods purchased or owned by him, and clearly identified as owned by Visualise™, until they have been paid in full.
- 6.3 in the event that the Customer fails to make payment in accordance with 6.1, 6.3, or 6.5, then without prejudice to Visualise™'s other rights, whether under these Terms or at law, Visualise™ may lawfully and without notice enter the location or any premises of the Customer and remove the Goods from any part of the location or premises to which they have been fixed.
- 6.4 in the event that the Customer sells any of the Goods while money is owed to Visualise™, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- 6.5 risk of the Goods passes to the Customer at the time of delivery, and for so long as ownership and property in the Goods remains with Visualise™, the Customer must keep the Goods insured in Visualise™'s name for at least the price at which the Customer acquired them from Visualise™.
- 6.6 if the Customer mixes the Goods with the other Goods, so that the Goods are no longer separately identifiable, the purchaser and Visualise™ will be owners in common of the mixed Goods.

## **7. Personal Property Securities Act.**

- 7.1 unless otherwise stated, a term contained in these Terms that is defined in the PPSA (but not otherwise defined in these Terms) has the meaning given to it in the PPSA.
- 7.2 the Customer acknowledges and grants Visualise™ a security interest for the purposes of the PPSA in:
  - 7.2.1 all Goods and any proceeds from Goods previously supplied by Visualise™ to the Customer;



- 7.2.2 all Goods and any proceeds that will be supplied in the future by Visualise™ to the; customer created under this Agreement (as the accepted and adopted security agreement between the parties); and
- 7.2.3 this security interest secures all moneys owing by the Customer to Visualise™ under these Terms or otherwise.
- 7.3 the Customer acknowledges and agrees the security interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) security interest and any unsecured creditor.
- 7.4 the Customer grants to Visualise™ a security interest over Goods or their proceeds arising under this clause 7 and acknowledges the security interest is a 'purchase money security interest' (PMSI) under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods .
- 7.5 for the avoidance of doubt and without prejudice to Visualise™ 's rights under the PPSA:
  - 7.5.1 the Customer may process the Goods supplied by Visualise™ to the Customer and accession or commingle them with other property in which case Visualise™ will have a security interest in any processed, accession and commingled Goods; and
  - 7.5.2 the Customer may sell the Goods to its customers and if it does so, then Visualise™ will have a security interest in the proceeds of sale.
- 7.6 the Customer will do everything reasonably required of it by Visualise™ to enable Visualise™ to register its security interests with the priority Visualise™ requires and to maintain those registrations including:
  - 7.6.1 signing any documents and/or providing any information which Visualise™ may reasonably require to register a financing statement or a financing change statement in relation to a security interest; or
  - 7.6.2 to correct a defect in a statement.
- 7.7 the security interests arising under this clause 7 will be perfected by Visualise™ prior to the Customer obtaining possession (on delivery of the Goods) and the parties confirm they have not agreed that any security interest attaches at any later time.
- 7.8 any time the Customer makes a payment to Visualise™, irrespective of whether the payment is made under or in connection with these Terms , Visualise™ may apply that payment:
  - 7.8.1 first to satisfy and obligation that is not secured;
  - 7.8.2 second, to satisfy an obligation that is secured, but not by a PMSI;
  - 7.8.3 third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI;
  - 7.8.4 fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source; or
  - 7.8.5 despite the foregoing, any manner Visualise™ sees fit.
- 7.9 Visualise™ does not need to give the Customer any notice under the PPSA (including notice of the single financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded and if Visualise™ is required to give a notice to the Customer under the PPSA, and the Customer may, under the PPSA, waive the Customer's right to receive that notice, then the Customer hereby waives that right.
- 7.10 if Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under this Agreement, the Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132(3) (d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of those security interests.
- 7.11 the Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPS A) or any other person, any information of the kind described in section 275(1) of the PPSA including the security agreement between the Customer and Visualise™.
- 7.12 the Customer will notify Visualise™ immediately in writing if the Customer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA.
- 7.13 the Customer agrees, until title in the Goods passes to it, to keep and maintain all Goods free of any charge, lien, or security interest except as created under these Terms and not otherwise to



deal with Goods in a way that will, or may, prejudice the rights of Visualise™ under these Terms or the PPSA.

- 7.14 the Customer irrevocably grants to Visualise™ the right to enter any premises of the Customer without notice, and without being in any way liable to the Customer or any other person, if Visualise™ has cause to exercise any of its rights under the PPSA (and in particular s123) and the Customer agrees to indemnify Visualise™ against any such liability.

## **8. Claims.**

Subject to rights provided for under the ACL, the Customer accepts the Goods unless it makes a written claim noting any defects to Visualise™ with seven (7) days of delivery and or installation.

## **9. Warranty.**

- 9.1 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 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.
- 9.2 if the Customer is a consumer as defined in the ACL nothing in this warranty restricts, limits or modifies the Customer's rights or remedies against Visualise™ for failure of a statutory guarantee under the ACL and specifically the statement in 9.1 is made in accordance with section 102 of the ACL and only applies if the Customer acquires goods from Visualise™ as a Consumer according to the Australian Consumer Law.
- 9.3 if clause 9.2 does not apply, any liability under this warranty is expressly limited at the sole discretion of Visualise™ to:
- 9.3.1 the repair of the Goods at the Customer's premises; or
- 9.3.2 the replacement or resupply of the Goods or parts to the Customer's premises.
- 9.4 Visualise™ warrants that Goods supplied will be free from defects in material and workmanship for a period of 12 months from the date of the supply or installation of the Goods by Visualise™. The benefits provided by this warranty are in addition to other rights and remedies which the Customer may have under a law in relation to the Goods to which this warranty relates.
- 9.5 to the maximum extent permitted by law, the Customer agrees that Visualise™ shall only be liable to make good, replace, repair or resupply the Goods in accordance with 9.3 in the event that:
- 9.5.1 the alleged defects have arisen solely from faulty materials or workmanship by Visualise™;
- 9.5.2 the Goods have not received maltreatment, inattention or interference from the Customer; and
- 9.5.3 the Customer at their own costs promptly returns any defective parts of the Goods to Visualise™.
- 9.6 if the Goods are not manufactured by Visualise™ but are manufactured by a third party, the Customer agrees that Visualise™ does not provide any guarantee in addition to that of the manufacturer as to the performance of the Goods.
- 9.7 Visualise™ is not responsible or liable for indirect, special or consequential damages arising out of or in connection with the use or performance of the Goods or other damage with respect to any economic loss, loss of property, loss of revenue or profit, loss of enjoyment or use, cost of removal, installation or other consequential damage of any nature.
- 9.8 during the Warranty Period, defective Goods will be repaired, replaced or resupplied in accordance with clause 9.3 if:
- 9.8.1 the defect is drawn to the attention of Visualise™ in writing, within 7 days of the Customer detecting the defect; and
- 9.8.2 the Customer supplies the original receipt showing the date, serial number and proof of purchase.
- 9.9 warranty service may be obtained by contacting Visualise™ using one of the methods detailed below.

Address: 580-598, Kororoit Creek Road, Altona North, VIC 3025

Phone: 1300 744 633

Fax: 03 9931 0811

Website: [www.vVisualise.com.au](http://www.vVisualise.com.au)

## **10. Indemnity.**



- 10.1 the Customer agrees to indemnify and keep indemnified Visualise™, its agents, employees or contractors from all claims, demands, actions or suits arising from:
  - 10.1.1 loss or damage to any property or death or injury to any person in connection with supply to and use of the Goods by the Customer; and
  - 10.1.2 infringement by Visualise™ of any patent, design or other intellectual property.

## **11. Default.**

- 11.1 If the Customer:
  - 11.1.1 commits any breach of these Terms;
  - 11.1.2 refuses or fails to accept delivery of the Goods;
  - 11.1.3 becomes bankrupt, insolvent or, if the Customer is a corporation, a liquidator, receiver, manager or administrator is appointed to the Customer;
  - 11.1.4 has an application for winding up made against it;
  - 11.1.5 enters into any composition or arrangement with the creditors, collectively referred to as an Event of Default, Visualise™ may without limitation to its rights;
  - 11.1.6 refuse, suspend or withhold any further supply of the Goods; and
  - 11.1.7 revoke any credit arrangement that the Customer may have had with Visualise™.
- 11.2 in the event the Customer commits an Event of Default and Visualise™ so demands, the Customer shall immediately deliver- up the Customer's expense any Goods for which payment has not been made to Visualise™ in full together with any other monies then outstanding from the Customer to Visualise™.
- 11.3 if the Customer fails to return the Goods, the Customer agrees that Visualise™ may retake possession of the Goods and for that purpose Visualise™, its servants or agents may without notice enter the location or any other premises of the Customer and remove the Goods from any part of the location or premises to which they have been fixed.

## **12. Jurisdiction.**

- 12.1 these Terms shall be governed by the laws of the State of Victoria.

## **13. Severability.**

- 13.1 if any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

## **14. Returns and Refunds.**

- 14.1 should your order be damaged or incorrectly supplied in any way you may return the goods for a replacement or full refund, only if:
  - 14.1.1 you have contacted the Visualise™ Head Office on 1300 881 071 immediately upon receiving the goods;
  - 14.1.2 you are within 30 days of original purchase date;
  - 14.1.3 you have a tax invoice or receipt as proof of purchase; and
  - 14.1.4 the items in the original condition as purchased.

## **15. Shipping.**

- 15.1 these terms and conditions confirm your agreeance to shipping fees that are charged at flat rates Australia wide, and are as follows:
  - 15.1.1 when you spend under \$250.00 a \$25.00 shipping fee will be charged;
  - 15.1.2 when you spend between \$250.00 and \$1,000.00 a shipping fee of \$50 will be charged;
  - 15.1.3 when you spend over \$1,000.00 a shipping fee of \$100.00 will be charged; and
  - 15.1.4 all international orders will be quoted individually and charged on a per job basis.
- 15.2 all deliveries are sent by registered post and are traceable by contacting Visualise™ head Office on 1300 881 071.

## **16. General.**



- 16.1 these Terms supersede all prior representations, arrangements and agreements between the parties in relation to the subject matter and form the entire agreement between the parties.
- 16.2 each provision of these Terms capable of having effect after termination shall survive termination and shall not merge on such termination.