

Visy Automation Supply Terms and Conditions

1 INCORPORATION:

A binding contract of sale, comprising the Proposal and these Terms and Conditions (the "Agreement") shall arise between Visy Automation and the Customer upon the Customer's acceptance of the Proposal or upon payment by the Customer of any instalment of the Price due in accordance with the Proposal. Any terms or conditions incorporated into any purchase order or other document furnished by the Customer in connection with the Proposal shall not bind Visy Automation, unless otherwise expressly agreed in writing by Visy Automation. The Proposal shall prevail over this document to the extent of any conflict or inconsistency between them.

2 PRICES AND PAYMENT:

The price for the Equipment and any services provided ("Price") shall be the price set out in the Proposal, which unless otherwise agreed, shall be payable in Australian dollars and at the times and in the instalments set out the Proposal. The Price does not include GST or any government taxes applicable to the supply, which shall be paid by the Customer.

Visy Automation reserves the right to charge interest at the current statutory penalty rate per annum calculated daily on any overdue amounts.

Unless otherwise agreed, Visy Automation reserves the right to vary the Price by written notice to the Customer in the event that any costs or expenses (including the cost of materials, labour or government taxes or charges) incurred by Visy Automation directly in connection with performing its obligations under the terms of this Agreement increase from the date of the Agreement until the date of delivery of the Equipment. Such Price variation will only be to the extent to pass on the direct cost and expense impact on Visy Automation.

3 DRAWINGS:

Notwithstanding provision of any drawings, the Customer acknowledges that all intellectual property rights in such drawings vests in Visy Automation and that the Customer shall not make any copies of such drawings without the approval of Visy Automation. Any specifications, descriptions, weights, dimensions or performance figures set out in the drawings are approximations.

4 DELIVERY:

Visy Automation shall use reasonable endeavours to ensure delivery of the Equipment to the Customer on the date for delivery set out in the Proposal (if any). However, Visy Automation shall not be liable to the Customer in the event that the date for delivery set out in the Proposal is not met. Delivery shall be deemed to be effected by providing the Equipment to the Customer at the Site or by Visy Automation making the Equipment available for collection by the Customer or its agent or carrier. If Visy Automation is required to deliver the Equipment to the Site, the Customer shall be responsible for uncrating and unloading the Equipment at the Site, placing the Equipment in the appropriate position at the Site and providing all infeed and outfeed services and connecting required services. If the Customer is unwilling or unable to take delivery of the Equipment on the date set out in the Proposal, Visy Automation shall be entitled to reimbursement of all reasonable direct costs and expenses incurred by Visy Automation arising from the delay, including any storage costs incurred by Visy Automation.

5 SPECIFICATIONS:

(a) Visy Automation warrants to the Customer that at the time of delivery the Equipment will meet the Specifications, subject to paragraph (b) below.

(b) Visy Automation may vary the Specifications of the Equipment in accordance with its policy of continual product improvement.

6 INSTALLATION:

Where Visy Automation has agreed in writing to provide installation services, Visy Automation shall only be required to make technicians available to assist the Customer with installation of the Equipment. The Customer shall provide all access to the premises and all assistance required by Visy Automation's technician in relation to installation, including providing services such as lifting equipment and utilities required by Visy Automation's technician.

7 RISK AND TITLE:

Risk to the Equipment shall pass to the Customer upon the delivery of the Equipment to the Customer or delivery of the Equipment to the Customer's agent or carrier.

The Customer agrees that title to and property in all components of the Equipment is retained by Visy Automation until payment by the Customer of the purchase price for all of the Equipment and all other amounts outstanding ("Unpaid Goods"). The Customer must store the Unpaid Goods so that they are identifiable as those supplied by Visy Automation, and ensure they are properly stored and adequately insured.

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

8 PRACTICAL COMPLETION:

If agreed in writing with the Customer, Visy Automation shall ensure the Equipment achieves Practical Completion in accordance with the procedure for practical completion set out in the Proposal. The Customer shall provide Visy Automation with all assistance required by Visy Automation in connection with Practical Completion, including without limitation, access to all relevant services, employees of the Customer involved in the operation of the Equipment and products for use in the Equipment, at no charge to Visy Automation.

If the Equipment satisfies the requirements of Practical Completion in all material respects, Visy Automation shall deliver a certificate to Customer which shall be taken to be evidence of satisfaction of Practical Completion. If the Equipment does not satisfy the requirements of Practical Completion in all material respects, Visy Automation shall within a reasonable time, provide the Customer with the reasons why Practical Completion was not achieved, the procedure for achieving the criteria required for Practical Completion and the time for Practical Completion to be achieved.

Until such time as the Equipment achieves Practical Completion in accordance with this clause, the Customer shall not operate the Equipment in any way, other than with the consent of Visy Automation.

The Customer shall be required to take out and maintain all appropriate insurances relating to installation services performed by Visy Automation's technicians on the Customer's premises and shall indemnify Visy Automation against any loss or damage incurred by Visy Automation arising from any injury to an employee, agent or contractor of Visy Automation in connection with the provision of installation of the Equipment or Practical Completion on the Customer's premises.

9 WARRANTY:

(a) Subject to paragraph (b), Visy Automation warrants that the Equipment will for a period of 12 months from the date of delivery be free from defects in materials and workmanship. All claims must be received in writing within this 12 month period. Visy shall be responsible for the cost of repair or replacement of damaged or defective parts of the Equipment during this period. Visy Automation shall not be liable for any labour or travel costs associated with replacement and installation of parts in accordance with this warranty. Unless otherwise agreed, such costs and expenses shall be payable by the Customer.

(b) The warranty set out in paragraph (a) shall not apply in respect of any defects which arise from or in connection with (i) any failure by the Customer to properly operate or maintain the Equipment in accordance with Visy Automation's instructions or in accordance with law, (ii) incorrect handling or modification of the Equipment by the Customer (iii) any defective equipment or materials used by the Customer in conjunction with the Equipment or (iv) fair wear and tear arising from normal operation of the Equipment.

10 LIMITATION OF LIABILITY:

The Customer acknowledges that it has not relied on and Visy Automation has not provided to the Customer any representation or warranty relating to the Equipment other than the warranties set out in these Terms and Conditions. Except for the warranties in paragraph 9, all warranties, representations or conditions in relation to the Equipment or provision of services (express or implied) are excluded to the full extent permitted by law.

If at the time of delivery the Equipment does not meet the relevant Specification or fails to comply with the terms of this Agreement, as the case may be, Visy Automation shall immediately, at its option and at its cost, repair or replace the non-complying Equipment or refund the invoiced Price of such Equipment (where this has already been paid by the Customer to Visy Automation), provided that the Customer has provided Visy Automation with prompt written notice of the non-compliance, has permitted Visy Automation to inspect the Equipment (or if requested by Visy Automation has provided the piece of the Equipment referred to in the notice to Visy Automation, at Visy Automation's cost) and has provided with Visy Automation with a reasonable period to remedy any such defect. If Visy Automation is required to replace any piece of the Equipment under this Agreement it shall ensure that the relevant piece of Equipment is delivered duty paid to the Customer for installation in the Equipment.

Notwithstanding any other term of this Agreement, Visy Automation will not be liable for any consequential, indirect or special loss or injury of any kind or loss of profits suffered or incurred by the Customer or any of its employees, agents or contractors or any other third party in connection with the supply of the Equipment under the terms of this Agreement, including any loss of goodwill, business opportunity, production time or production capacity in connection with the Equipment.

11 INTELLECTUAL PROPERTY RIGHTS:

Unless the Customer and Visy Automation agree otherwise in writing, the Customer agrees that all intellectual and industrial property including, without limitation, any invention, discovery, patent, trade mark, copyright, design, trade secret or know-how, including "works" as that term is defined in section 10(1) of the Copyright Act 1968 (Cth) such as computer programs ("Intellectual Property") produced or developed by or on behalf of Visy Automation in relation to the supply of the Equipment, any services or otherwise in relation to this Agreement is the sole and absolute property of Visy Automation.

The Customer assigns all Intellectual Property to Visy Automation and agrees to execute any document required to evidence such assignment or to perfect Visy Automation's ownership of such Intellectual Property.

If Visy Automation does provide any Software to the Customer in connection with the supply of the Equipment, Visy Automation grants to the Customer a non-exclusive, perpetual (unless terminated in accordance with paragraph 12) licence to use the Software in connection with the Equipment. This licence does not permit the Customer to sub-licence or rent to Software or use the Software to provide services to any third party without the written approval of Visy Automation.

12 CANCELLATION:

Visy Automation may agree to a Customer's request to cancel any order for the Equipment in its absolute discretion. In the event of cancellation, the Customer must reimburse Visy Automation for any reasonable costs or expenses incurred or committed by Visy Automation in preparation for and in execution of the order.

13 DEFAULT AND TERMINATION:

If the Customer:

(a) fails to make a payment due to Visy Automation, within 7 days of notice from Visy Automation specifying such payment is due; or
(b) is in breach of any other obligation set out in this Agreement, provided that Visy Automation has provided a notice to the Customer setting out the circumstances of the breach and at least 14 days have elapsed from the date of such notice,

then Visy Automation without prejudice to any other remedy that may be available to it, has the immediate right to do one or more of the following:

(d) demand that the Customer immediately account to Visy Automation for any money or property owed to Visy Automation under this Agreement or on any other account (and the Customer shall comply with such demand);

(e) withhold further deliveries;

(f) re-take possession of the Equipment (or any components thereof delivered) in relation to which title has not passed under paragraph 7, without notice to the Customer and for that purpose the Customer authorises Visy Automation to enter upon any premises occupied by the Customer or any other place that the Equipment (or any components thereof) are stored, free from trespass; and

(g) terminate the Agreement and recover from the Customer, at a minimum, reasonable compensation for materials purchased or ordered, and labour expended, in complying with the Agreement.

Either party may immediately terminate this Agreement if the other party suffers an Insolvency Event (and if the Insolvency Event relates to the Customer, then Visy will be entitled to (d) - (f) above).

14 FORCE MAJEURE:

If at any time for any reason beyond Visy Automation's control (including, without limitation, by reason of war, terrorism, cyberattack, software malfunction, storm, fire, flood or other act of God, epidemic, strike, labour dispute, shortage of raw materials, utility interruption, damage or breakdown of plant and equipment, changed market conditions, order of any governmental or regulatory body) it becomes practically impossible or commercially unviable in the opinion of Visy Automation to supply the Equipment, then Visy Automation shall, for the affected period, be relieved of its obligations under the Agreement and/or may delay (in whole or in part) supply or terminate the Agreement, without penalty and on written notice to the Customer.

15 GENERAL:

- (a) The Agreement represents the entire agreement between Visy Automation and the Customer relating to the supply of the Equipment and any modification or variation to the Agreement must be agreed in writing by both parties.
- (b) The Customer may not assign any right or obligation under the Agreement without the written consent of Visy Automation.
- (c) The Customer may not exercise any right of withholding, deduction or set off.
- (d) The Customer agrees that Visy Automation may apply payments to Amounts Outstanding as it sees fit, notwithstanding any contrary appropriation by the Customer.
- (e) If any provision of the Agreement 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.
- (f) This Agreement shall be governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria in relation to any dispute arising under the Agreement.
- (g) The Customer will not divulge to any person the forms of the Agreement or any information provided by Visy Automation in relation to the Agreement without the prior written consent of Visy Automation, except as required by law or for the purposes of affirming professional, legal, financial or taxation advice.
- (h) If and to the extent that the supply of Equipment and/or services to the Customer under this Agreement is a taxable supply with in the meaning of the GST Law, the Price for the Equipment will be increased to include GST payable by the Customer in respect of the supply. Visy Automation and the Customer agree that they will be registered persons within the meaning of the GST Law, and that Visy Automation shall provide tax invoices to the Customer in the form prescribed by the GST Law.

16 DISPUTE RESOLUTION:

Visy Automation and the Customer agree that any dispute arising under this Agreement shall be determined in accordance with this clause. Prior to a party commencing any legal proceedings in respect of any matter arising under this Agreement, the party must issue a written notice to the other party outlining the circumstances of the dispute. Following issue of a notice by a party, as soon as reasonably practicable, but in any event no longer than 14 days from the date of the notice, appropriately authorised representatives of each of the parties must meet to discuss the matters set out in the notice provided under this clause. In the event that the parties cannot resolve the dispute within 7 days of the discussions between the authorised representatives, either party may commence litigation in respect of the matters in dispute, provided it has given notice to the other party of its intention to do so.

17 PPSA

- (a) 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 Customer agrees that the Agreement constitutes a security agreement for the purposes of the PPSA.
- (c) The Customer grants to Visy Automation, VIA and each of their Related Bodies Corporate (each a "Secured Party"), a security interest in all Unpaid Goods supplied to the Customer by Visy Automation and any proceeds in respect of those Unpaid Goods ("Proceeds") to secure the amounts outstanding to Visy Automation. The Customer 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 the Agreement, the Agreement shall take effect as a deed poll by the Customer in favour of that Secured Party and shall be enforceable by that Secured Party.
- (d) The Customer 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 the Agreement and, for the avoidance of doubt, may include any or all of the Secured Parties as the secured party in such registration. The Customer agrees not to lodge any Amendment Demand with respect to any registration made by a Secured Party.
- (e) The Customer 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 Customer agrees that until ownership of the Unpaid Goods has passed to the Customer under paragraph 7, 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 the Agreement.
- (g) To the maximum extent permitted by law, the Customer 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.

18 DEFINITIONS:

"Agreement" means the Proposal and these Terms and Conditions.

"Amounts Outstanding" means, at any time, all amounts owed by the Customer at that time whether arising under the Agreement or otherwise.

"Customer" means the party placing the Purchase Order.

"Equipment" means the equipment to be supplied by Visy Automation to the Customer under the terms of the Agreement.

"GST" means has the meaning in the GST Law.

"GST Law" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Insolvency Event" means the occurrence of any event which results in Visy Automation holding the reasonable belief that the Customer has become unable to pay its debts as and when they fall due, including the Customer proposing any arrangements with its creditors, the Customer being placed in administration, a resolution is passed or proposed or a petition is presented or application filed or an order is made for the winding up or liquidation of the Customer or a receiver or controller is appointed over any property of the Customer.

"Practical Completion" means the procedure whereby the Equipment will be tested to ensure that it meets the criteria set out in the Proposal as described under the heading "Process for Practical Completion"

"Price" means the amount payable by the Customer to Visy Automation for the supply of the Equipment and any associated services, as set out in the Proposal.

"Proposal" means the proposal provided by Visy Automation to the Customer outlining the scope of supply and the terms and conditions upon which the Equipment and any relevant services will be supplied.

"Purchase Order" means the purchase order placed by the Customer with Visy Automation which evidences the Customer's request for the Equipment or, any other document provided to Visy Automation by the customer

"Related Body Corporate" has the meaning given to that term in the *Corporations Act 2001 (Cth)*, and Related Bodies Corporate has a corresponding meaning.

"Site" means the premises at which the Equipment will be installed as set out in the Proposal.

"Software" means all software specified in the Proposal that will be provided to the Customer and any software developed by Visy Automation or provided to the Customer for use in connection with the Agreement.

"Specifications" means the specifications for the Equipment set out in section 4 of the Proposal, or, if they are not set out in the Proposal, such other document as may be agreed by the Customer and Visy Automation.

"Unpaid Goods" has the meaning set out in paragraph 7.

"VIA" means Visy Industries Australia Pty Ltd (ACN 004 337 615).

"Visy Automation" means Visy Board Pty Ltd (ACN 005 787 913).