

VISUAL TECHNOLOGIES – TERMS & CONDITIONS

1 General

- 1.1 These terms & conditions apply to all transactions between the customer and Visual Technologies relating to the provision of Goods and/or Services, including all quotations, contracts and variations.
- 1.2 These terms & conditions take precedence over terms & conditions contained in any document of the customer or elsewhere.
- 1.3 The variation or waiver of a provision of this agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.
- 1.4 Either party may amend its relevant details in a Quote. Any amendments to a Quote must be in writing and Visual Technologies may accept or reject any amendments.
- 1.5 Visual Technologies may amend any details in a Quote by notice in writing to the customer. Such amended details shall supersede any relevant prior detail in dealings between the parties thereafter.
- 1.6 You agree that any Goods or Services provided ordered by you are for business use or consumption and that we can rely on this representation in agreeing to supply Goods or Services.
- 1.7 We may cancel or amend these terms & conditions at any time and any cancellation or amendment will take effect as soon as we have given you written notice of them. Any Quote provided by us after that notice will be subject to the new terms & conditions.

2 Quotes

- 2.1 Visual Technologies may provide the customer with a Quote containing a description of the Goods and/or Services required to be provided to fulfil the customer's Order, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work. Any Quote issued by Visual Technologies will be valid for a period of thirty (30) days from the date of issue.
- 2.2 Unless otherwise expressly agreed in writing, a quote does not include:
 - (i) delivery and/or installation of the Goods; and
 - (ii) sales tax, GST and any other taxes or duties payable on the Goods
- 2.3 You agree that the amount payable by you will be the total amount quoted by Visual Technologies for the Goods and or Services plus delivery and installation costs, sales tax, GST and any other taxes or duties payable on the goods.
- 2.4 Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the customer of necessary material and instructions to Visual Technologies.
- 2.5 Following provision of a Quote to the customer, Visual Technologies is not obliged to commence work until the Quote has been accepted by the customer by completing an Order form and returning the form to Visual Technologies. Subject to 2.7, any time frame for completion of work provided by Visual Technologies will not commence until a completed Order form has been received by Visual Technologies.
- 2.6 Visual Technologies reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order and Visual Technologies will notify the customer of such amendment as soon as practicable thereafter. Upon Visual Technologies giving the customer notification of such amendment, such amended Quote will be the estimate or Quote for the purposes of these terms & conditions.
- 2.7 An indication in a Quote of the time frame for the provision of the Goods and/or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the *Australian Consumer Law*, this estimate is not binding upon Visual Technologies.

3 Orders

- 3.1 Every Order by the customer for the provision of Goods and/or Services must be submitted in writing on Visual Technologies standard Order form (unless otherwise agreed).
- 3.2 An Order will not be deemed by Visual Technologies to have been placed by the customer unless the Order clearly identifies the Goods and/or Services ordered and Visual Technologies Quote, and has been submitted as required under 3.1. Any costs incurred by the Visual Technologies in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.
- 3.3 Orders must specify the required date of delivery.
- 3.4 Orders placed by a customer will be taken to be placed regardless of them being made by a person who is not authorised by the customer to make that Order.
- 3.5 Placement of an Order by the customer signifies acceptance by the customer of these terms & conditions and the most recent Quote.
- 3.6 Visual Technologies may in its absolute discretion refuse to provide Goods and/or Services where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) Credit limits cannot be agreed upon or have been exceeded; or
 - (iii) Payment for Goods and/or Services previously provided to the customer or any related corporation of the customer or to any other party, who is, in the reasonable opinion of Visual Technologies, associated with the customer under the same or another supply contract, has not been received by Visual Technologies
- 3.7 An Order cannot be cancelled unless the prior written consent of Visual Technologies is obtained. Where an Order is cancelled, the customer indemnifies Visual Technologies against any Losses incurred by Visual Technologies as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- 3.8 Visual Technologies will use its best endeavours to deliver the correct quantity ordered however quantities will at the time be considered estimates only and are conditional upon a margin of five percent (5%) being allowed for over's or shortages, which shall be charged for or deducted as appropriate.
- 3.9 Where council approval is required for the installation of signage and related structure and the customer does not produce evidence of such approval, the customer will be liable for the production of the sign. Installation will not proceed until evidence of such approval is provided by the customer, including provision of relevant permits and authorisation from the council.

4 Expedited Delivery

- 4.1 The customer acknowledges that a requirement for urgent delivery increases the likelihood of defects. Visual Technologies will use reasonable efforts to avoid defects but will not be liable for defects arising because of urgent delivery.
- 4.2 The price will be increased to cover overtime work or other additional costs incurred as a result of any requirement for urgent delivery.

5 Outside Work

If Visual Technologies has to obtain goods and/or services not normally stocked or supplied by Visual Technologies from a third party in order to carry out the customer's instructions:

- (a) Visual Technologies acquires these goods and/or services as agent for the customer and not as a principal. It will have no liability to the customer in relation to the supply of those goods and/or services. Any claim by the customer in relation to the supply of those goods and/or services must be made directly against the third party supplier;
- (b) The customer must pay for such goods and/or services; and
- (c) Any such goods are obtained on the basis that title in those goods passes to Visual Technologies when the goods are incorporated into the work done by Visual Technologies

6 Payment

- 6.1 Once the order is completed Visual Technologies will invoice the customer for the quoted price plus any additional charges referred in section 3 and 4, regardless of whether the person making the order is authorised to do so.
- 6.2 Visual Technologies may at its option charge interest at the interest rate fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)* on amounts not paid within any agreed credit arrangements, calculated on a daily basis from the date any such amount should have been paid and until the date of payment.
- 6.3 If payments owed by customers exceed 60 days past their terms, Visual Technologies will pass collection of this debt to a debt collection agency where extra charges will be incurred by the customer.
- 6.4 All new customers are required to pay 100% up front on the total quoted cost. Subsequent works will be COD. Any credit arrangements will require an Account Application form to be completed and approved by Visual Technologies.

7 Terms

- 7.1 Account payment terms are strictly 30 days from the date of invoice. If these terms have not been met, the account may be revoked.
- 7.2 All other non-account holders are required to pay up front before delivery of any goods.

8 Breach of terms

- 8.1 If a customer does not pay Visual Technologies as required under these Terms and Conditions, or suffer an insolvency event (including but not limited to a winding up, appointment of a voluntary receiver, administrator or similar insolvency administrator, or become bankrupt, enter into a scheme or arrangement with creditors), we can request the customer to return our goods and any insurance related to our goods.
- 8.2 If any of the events in 8.1 occur, the customer licenses Visual Technologies to enter any premises or site where our goods are installed or stored, to locate those goods and repossess those goods. The customer agrees Visual Technologies has a right to resell those repossessed goods and that Visual Technologies are not liable for the repossession of those goods.
- 8.3 Where the customer has a credit arrangement with Visual Technologies, if any of the events in 8.1 occur, that credit arrangement is terminated and any amounts owing are immediately due.

9 Warranties and limitation of liability

- 9.1 All conditions terms and warranties regarding the quality or characteristics are expressly excluded, except where that exclusion would breach statutory provision, or where any implied condition, terms or warranty would make this clause void. If a condition, term or warranty is implied into these Terms and Conditions by statutory provision, which prohibits the exclusion or modification of a condition, term or warranty, Visual Technologies may limit its liability for breach by:
- (i) where the breach relates to services:
- (1) payment of the cost to have services supplied again; or
 - (2) resupplying the services.
- (ii) where the breach relates to goods
- (1) refund of the price of goods or payment of the cost of equivalent goods;
 - (2) repair of the goods or payment for the cost of repairing the goods; or
 - (3) replacement of the goods or supply of equivalent goods
- 9.2 Where the goods supplied or installed by Visual Technologies contain a manufacturer's warranty, the customer agrees that any claim in relation to those goods is to be made directly to the manufacturer under the manufacturer's warranty. Visual Technologies may choose, at its discretion, to assist the customer with any claims under a manufacturer's warranty.
- 9.3 Visual Technologies will not be liable to the customer for loss, howsoever caused, of any data stored on disks, tapes, compact disks or other media supplied by the customer to Visual Technologies or for any damage, loss or destruction of any property of the customer unless the loss or damage has been caused by the failure of Visual Technologies to exercise due care and skill in handling or storing such property.

10 Force Majeure

Visual Technologies will have no liability to the customer for any loss, damage or expense suffered or incurred by the customer because of Visual Technologies' failure to observe these terms and conditions, where such failure is occasioned by any cause beyond Visual Technologies reasonable control, including and without limiting the generality to the foregoing by war, insurrection, fires, floods, strikes, lockouts, delays in transport, breakdowns in machinery, the inability or failure of a supplier to supply necessary materials, or prohibitions or other action by any government or semi-government authority, or embargoes.

11 Delivery

The delivery terms are estimates only. Visual Technologies will not be liable for any loss, damage or delay suffered by the customer because of late or non-delivery of the goods or services.

12 Title and Risk

- 12.1 The goods remain the property of Visual Technologies. Title in the goods only passes to the customer once Visual Technologies receives all amounts due.
- 12.2 The goods are at the customer's risk from the time they leave Visual Technologies' premises for delivery and or installation at the customer's premises or installation site.
- 12.3 Visual Technologies shall not be liable for insurance, freight or loss or damage to goods in transit incurred during delivery.

12.4 The customer indemnifies us for any loss to the goods occurring after delivery.

13 Claims

The customer must inspect goods or services supplied by Visual Technologies within 14 days from delivery. Any claims against Visual Technologies must be in writing within such fourteen (14) days. No claims shall be made by the customer beyond this period.

14 Copyright

14.1 Copyright in all artistic and literary works authored by Visual Technologies shall remain the property of Visual Technologies unless there is a written agreement to the contrary.

14.2 The customer warrants to Visual Technologies, that the customer has copyright in or a license to authorise Visual Technologies to reproduce all artistic and literary works supplied by the customer to Visual Technologies for the purpose of the Order. The customer expressly authorises Visual Technologies to reproduce all and any of such works for the purposes of the order.

14.3 The customer indemnifies and agrees to keep indemnified Visual Technologies against all liability, losses or expenses incurred by Visual Technologies in any way directly or indirectly connected with any breach of copyright on materials supplied by the customer.

14.4 Conditional upon receipt of payment in full for the work performed by Visual Technologies, Visual Technologies grants to the customer a non-exclusive license to use the copyright in works created by Visual Technologies for the purpose of the order.

15 Confidentiality

The customer must keep confidential and must (without Visual Technologies written consent) use any ideas, systems or processes communicated or made available by Visual Technologies to the customer.

16 Electronic Media

16.1 All Disks, tapes, compact disks or other media (other than the media supplied by the customer) used by Visual Technologies to store data for the purposes of completing the Order are the property of Visual Technologies. The customer cannot require Visual Technologies to supply to the customer any such data. Visual Technologies may charge the customer for supplying such data to the customer.

16.2 Visual Technologies will not be liable for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Visual Technologies agrees to store such data Visual Technologies may charge the customer to do so.

17 Goods and Services Tax

The customer will be liable for any goods and services tax payable because of the supply of goods and/or services by Visual Technologies to the customer.

18 Severability

If any provision in these terms & conditions are illegal, unenforceable or void, but would not be if those words were not included, those words are to be severed from this agreement where possible, or the whole of the affected provision severed if required, without affecting the enforceability or validity of the remaining Terms and Conditions.

19 Waiver

A failure by Visual Technologies to delay any right, or exercise a right at all, under these Terms and Conditions, is not a waiver of any right. A waiver of any right can only be effective where in writing.

20 Governing law

These Terms and Conditions are governed by Victorian laws and any dispute in relation to these Terms and Conditions is to be heard in Victorian courts or tribunals, or through Victorian mediation or arbitration processes.