

VIVID SOLUTIONS LIMITED
TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these terms and conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:
Application means any credit application provided to a Customer by the Company;
Associated Services means services which are ancillary to the supply of the Goods provided by the Company to the Customer under the Contract;
Company means Vivid Solutions Limited or any of its subsidiaries, whether wholly or partly owned;
Contract means the contract for the supply of Goods by the Company to the Customer, comprised of these Terms, and either a Quotation or an accepted Purchase Order and the Application (if any);
Customer means the purchaser of the Goods and any Associated Services (if any) from the Company;
Delivery Point means the address for the delivery of the Goods stated in the Quotation or Purchase Order or otherwise agreed by the parties;
Goods means the goods and any Associated Services (if any) supplied by the Company to the Customer under the Contract;
GST means goods and services tax payable under the Goods and Services Tax Act 1985;
Delivery Date means the estimated delivery date as advised by the Company on which the Goods will be delivered to the Customer;
Personal Information has the meaning given to it in the Privacy Act 1993;
Price means the price payable under the Contract (excluding GST);
Purchase Order means an order for Goods placed by the Customer to the Company or a document issued by the Customer reflecting or confirming a Quotation;
Quotation means a quote issued by the Company setting out the particulars of the supply of the Goods to the Customer;
Terms means these terms and conditions as they may be amended from time to time; and
Working Day means a day, other than a Saturday, Sunday or a public holiday, on which registered banks are open for general banking business in Auckland, New Zealand.
- 1.2. **Conflict of Terms:** Unless the Company and Customer agree otherwise in writing in the event of any conflict arising between these Terms and any other terms between the Customer and the Company, these Terms shall prevail.
- 1.3. The Customer acknowledges that no terms included in any Purchase Order accepted by the Company shall be applicable to the Company.
- 1.4. Words importing the singular include the plural and vice versa.
- 1.5. Headings are for convenience only and do not

form part of, or affect the interpretation of, these Terms.

- 1.6. References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 1.7. References to a statute include references to:
- 1.7.1. regulations, orders, rules or notices made pursuant to that statute;
 - 1.7.2. all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
 - 1.7.3. any statute passed in substitution of that statute.

2. SUPPLY OF GOODS AND FORMATION OF CONTRACT

- 2.1. The Company will supply and the Customer will order the Goods from the Company, subject to these Terms.
- 2.2. The Customer may order goods and services by requesting a Quotation or submitting a Purchase Order. All orders of Goods are subject to availability. If any item is not available, the Company may, with the Customer's agreement, substitute goods which are of equivalent or superior description and quality in which case the Customer shall be charged the price of the substituted goods.
- 2.3. No Contract shall come into existence until either a Purchase Order for the Goods has been accepted by way of written confirmation by the Company (which may include the Company issuing a Quotation) or the Company has provided a Quotation for the Goods which has been accepted by the Customer. If an Application has been provided by the Company in connection with a Purchase Order or a Quotation, any Contract is conditional on the Application being completed and accepted by the Company or the Company waiving the requirement for an Application. Each accepted Purchase Order or Quotation constitutes a separate Contract, incorporating these Terms between the Customer and the Company. Where an Application in relation to the Customer has been completed by the Customer and accepted by the Company that Application shall form part of any subsequent Contract with that Customer.
- 2.4. The provision of any services on a recurring basis shall be subject to a separate services agreement between the parties.

3. DELIVERY

- 3.1. Unless otherwise agreed in writing between the parties, the Company will be responsible for arranging the carriage of Goods to the Delivery Point.
- 3.2. Where the Company arranges for carriage of Goods:
- 3.2.1. if the Customer or the Customer's authorised agent are not present at the Delivery Point

when the Goods are delivered, Delivery will be deemed to be effected in any event;

- 3.2.2. if the Customer indicates to the Company that the Customer will fail or refuse to take or accept delivery, then Delivery is deemed to have been made when the Company is willing to deliver the Goods.
- 3.3. The Company may charge the Customer storage and transportation expenses if the Customer fails or refuses to take or accept delivery or indicates to the Company that the Customer will fail or refuse to do so.
- 3.4. The Company reserves the right to deliver Goods by instalments and each instalment shall be treated as a separate Contract under these Terms.
- 3.5. The Company will advise the Customer of the expected Delivery Date. However, all Delivery Dates are to be treated as estimates only. The Company will endeavour to deliver the Goods on the Delivery Date and will keep the Customer informed of progress, but will not be liable, nor may the Customer cancel any order or any part of any order, for late delivery. Any date specified as the Delivery Date shall not be treated as a condition of sale.
- 3.6. In the case of export sales, delivery on a sale FOB, CIF, or C&F basis (as specified on the Quotation or Purchase Order or as otherwise agreed by the parties) in accordance with Incoterms 2010 will, unless otherwise agreed in writing, be complete when the Goods effectively pass the ship's rail at the port of shipment or arrive at the airport for despatch or earlier leave our custody for shipment to the Customer. Trans-shipment is not allowed. Delivery may be effected by us at our election by one or more shipments.

4. INSTALLATION

- 4.1. If the Company agrees to install Goods for the Customer, the Company will do so on the basis that it is the Customer's responsibility to:
 - 4.1.1. promptly provide all necessary plant, materials, services and other resources necessary to enable the Company to carry out the installation;
 - 4.1.2. promptly obtain any necessary consent, approval, permit, licence or authorisation to enable the Company to carry out the installation;
 - 4.1.3. ensure that the premises and foundations are structurally sound and otherwise in a proper condition for the installation to proceed;
 - 4.1.4. prepare the site in such manner as is specified by the Company to enable the installation to proceed; and
 - 4.1.5. to provide safe and secure onsite storage for materials and accessories supplied and used by the Company, its employees and contractors.
- 4.2. The Customer must promptly advise the Company of any decision or instruction that needs to be made or given before the Company is able to proceed with the installation and must ensure the decision or

instruction occurs in a timely manner.

5. TITLE AND RISK

- 5.1. Until the Company has been paid in full for the Goods, the Company and Customer agree that the Company shall retain ownership of all Goods supplied by the Company.
- 5.2. Risk in all Goods passes to the Customer immediately upon delivery. The Customer shall insure Goods for their full price, and shall not sell, dispose or part with possession of them or do anything else inconsistent with the Company's ownership of the Goods, from delivery until title in them passes to the Customer.
- 5.3. The Customer shall bear the risk of any damage to the Goods during installation carried out at the Customer's premises (except to the extent the damage has been caused by or contributed to by the Company's negligence).
- 5.4. Pending payment of all amounts payable under these Terms the Customer shall store the Goods in such a manner that allows the Goods to be readily identifiable as property of the Company.

6. PRICE

- 6.1. All Prices are plus GST. GST is to be paid by the Customer in addition to the Price.
- 6.2. Unless otherwise agreed in writing, the Price does not include taxes, import duties or other levies or tariffs, delivery, or insurance charges and, if applicable, such amounts are to be paid by the Customer in addition to the Price.
- 6.3. All Prices are subject to change without notice. The Price payable by the Customer for any Goods shall be the price determined by the Company on the Delivery Date of the relevant Goods as set out on the order confirmation or invoice issued by the Company at or following that time.
- 6.4. If the Company provides a Quotation to the Customer or quotes a price in relation to a Purchase Order, the Quotation or quoted price:
 - 6.4.1. will be in writing;
 - 6.4.2. will be valid for acceptance for the period of time specified in the Quotation or advised by the Company;
 - 6.4.3. will exclude the cost of delivery; and
 - 6.4.4. unless otherwise agreed in writing, the Price quoted is exclusive of GST.
- 6.5. Prices are stated in New Zealand dollars based on the prevailing exchange rate at the date of Quotation or confirmation of Purchase Order. The Company's pricing is based on a conversion from United States dollars, and any fluctuation in the published ASB Bank Limited selling rate of more than 2% between the date of Quotation or confirmation of Purchase Order and the date of receipt of payment will be debited or credited to the Customer's account.
- 6.6. Unless otherwise stated in writing, Prices are exclusive of the costs of any installation of Goods or other services supplied by the Company to the Customer.
- 6.7. The Company reserves the right to correct any typographical or clerical errors contained in the Price

or in the Quotation or a quoted price.

7. PAYMENT

- 7.1. On accepting any order for Goods, the Customer will (unless otherwise agreed in writing with the Company) set up an automatic payment from its nominated bank account to the credit of the Company's bank account for the date specified on the approved Application for payment of the Goods.
- 7.2. Payment for the Goods will be made on the payment date specified on the approved Application and (unless otherwise agreed in writing with the Company) by way of automatic payment from the Customer's nominated bank account. The Company reserves the right to require the Customer to pay for the Goods (either in full or in part) prior to their supply by the Company.
- 7.3. Where there is no approved Application, payment for the Goods will be on terms specified in the Quotation, or on the invoice issued to the Customer by the Company, or in accordance with any payment terms notified to the Customer by the Company. If no such terms are specified or notified, payment will be by way of automatic payment from the Customer's nominated bank account to the Company by the 20th day of the month following the date of the invoice.
- 7.4. Time for payment is of the essence.
- 7.5. The Customer is not entitled to make any deduction from the Price of the Goods in respect of any set-off or counterclaim or to withhold any payment without the prior written approval of the Company.
- 7.4 The Company may apportion payments to outstanding accounts of the Customer as the Company sees fit.

8. DEFAULT

- 8.1. The Customer will be in default if:
 - 8.1.1. the Customer fails to pay an amount due under these Terms by the due date for payment; or
 - 8.1.2. the Customer commits a breach of any of the Customer's obligations under these Terms, or the terms of any other contract the Customer has entered into with the Company or a related entity; or
 - 8.1.3. the Customer becomes insolvent, is wound up, has a receiver, administrator, manager or liquidator appointed, enters into any composition or arrangement with the Customer's creditors, does any act which would render the Customer liable to be placed in liquidation or has a receiver appointed over the Customer's property, commits an act of bankruptcy, ceases to be of full legal capacity, or dies; or
 - 8.1.4. Goods that the Company has retained title to are, in the Company's opinion, at risk; or
 - 8.1.5. an event or a series of events (whether related or not) occurs which, in the Company's opinion, may cause a material adverse change in the Customer's ability to meet the Customer's obligations to the Company.

- 8.2. If the Customer is in default then the Company may, at its option, do any one or more of the following:
 - 8.2.1. charge the Customer default interest at 2.5% per month on any late payments calculated on a daily basis from the due date until the date payment is received;
 - 8.2.2. require the Customer to remedy the default in the manner and within a period that the Company informs the Customer by written notice;
 - 8.2.3. require the Customer to pay all amounts the Customer owes to the Company immediately;
 - 8.2.4. suspend delivery of the Goods;
 - 8.2.5. suspend or terminate the Contract;
 - 8.2.6. enforce security interests created by these Terms; or
 - 8.2.7. exercise any rights that the Company has under these Terms or that are available to the Company at law.
- 8.3. If the Customer is in default the Customer will be liable for all expenses and costs (including legal costs and debt collection costs) in relation to the Company enforcing or attempting to enforce the Contract.
- 8.4. The Company may suspend or terminate the Contract at any time in its sole discretion. If the Contract is terminated, the Customer must immediately pay all outstanding amounts to the Company. Termination will not affect any of the Company's rights that have arisen before termination.

9. PERSONAL PROPERTY SECURITIES ACT 1999

- 9.1. The Contract creates a security interest in Goods the Company supplies to the Customer for the purposes of the Personal Property Securities Act 1999 (**PPSA**).
- 9.2. The Customer shall not grant any other security interest or any lien over Goods that the Company has a security interest in.
- 9.3. At the Company's request the Customer shall promptly sign any documents and do anything else required by the Company to ensure the Company's security interest constitutes a first ranking perfected security interest in the Goods.
- 9.4. The Company may at any time enter the Customer's premises and properties to search for and uplift Goods that the Company has a security interest in, without in any way being liable to the Customer or any person claiming through the Customer (and the Customer indemnifies the Company against any such claims).
- 9.5. If the Company exercises its right to reclaim the Goods it shall be entitled to dispose of them as it sees fit. The Customer will indemnify the Company for any costs incurred by the Company in reclaiming the Goods, including any shortfall incurred by the Company in realising the Goods.
- 9.6. If the Goods or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be held on trust for the Company.
- 9.7. If the Goods that the Company has a security interest in are processed, included or dealt with in any way

causing them to become accessions, processed or commingled Goods, the Company's security interest will continue in the whole in which they are included.

- 9.8. The Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on the Company in the Customer's favour, shall not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 9.9. Without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.
- 9.10. The Customer shall give the Company prior written notice of any proposed change of the Customer's name or address.

10. WARRANTIES

- 10.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded. Except for any warranties expressly provided for in these Terms or otherwise agreed in writing by the Company, the Company excludes all warranties, representations, descriptions, conditions or obligations whether imposed or implied by law, trade, custom or under common law, equity or otherwise to the fullest extent permitted by law.
- 10.2. The Customer declares that the Customer is buying the Goods for the purpose of a business and accordingly it is agreed that the guarantees contained in the Consumer Guarantees Act 1993 are expressly excluded.
- 10.3. The Company warrants that:
- 10.3.1. on delivery, the Goods will be in good working order;
- 10.3.2. on delivery, the Goods will conform to the published specifications that are available to the Customer on request;
- 10.3.3. the Goods supplied (excluding software) are free of defects in materials and workmanship. This warranty shall apply for a period of 12 months from the actual delivery of the Goods; and
- 10.3.4. any Goods repaired or replaced in accordance with these Terms will be free from defects in materials and workmanship. This warranty shall apply for a period of 60 days from the actual delivery of the repaired or replaced Goods to the Customer.
- 10.4. The warranties in clause 10.3 are conditional on the use of the Goods by the Customer in accordance with the information and specifications supplied by the Company and provided that the Goods are used only for the purpose for which they are designed.

11. INDEMNITY AND LIMITATION OF LIABILITY

- 11.1. The Customer indemnifies the Company against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with the supply of Goods, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the Company or any breach of the Contract by the Company.
- 11.2. To the extent that the Company is liable for any reason for any loss suffered or liability incurred by the Customer arising from any breach of these Terms or the warranties in clause 10.3 or from any defect in the Goods supplied by the Company or for any other reason, such liability is limited to the Price of the particular Goods payable under the Contract or the cost to replace those Goods, whichever is less.
- 11.3. Except as expressly otherwise provided by clause 11.2, the Company shall not be liable for any loss or damage or liability of any kind whatsoever (including special, indirect or consequential damages or loss of profits or business or data) whether suffered or incurred by the Customer or another person and whether in contract, or tort (including negligence), or otherwise and whether such loss or damage arises directly or indirectly from Goods or services provided by the Company to the Customer.

12. RETURN OF GOODS

- 12.1. Subject to these Terms, the Customer may, within 10 Working Days of delivery of the Goods contact the Company to advise it of any:
- 12.1.1. incorrect deliveries; or
- 12.1.2. incorrect pricing; or
- 12.1.3. damaged Goods or claim under clause 10.3; or
- 12.1.4. unwanted Goods so long as those Goods remain unopened, in their original packaging, are the then current version and in an unused condition so as to be re-sellable 'as new',
- and seek to return or cancel the same (**Notification Period**).
- 12.2. All returns and/or cancellations under clause 12.1 (other than clause 12.1.3) require the Company's prior authorisation. Goods returned without the Company's prior authorisation will be dispatched freight forward to the Customer.
- 12.3. If the Notification Period expires and the Customer has failed to notify the Company of any damaged Goods or claim, incorrect or unwanted Goods, then the Goods received are deemed to be accepted by the Customer and the Company accepts no liability for claims made after the expiry of the Notification Period.
- 12.4. The Customer undertakes:
- 12.4.1. that all claims will be supported by a packing note, delivery docket, invoice or copy of the Quotation together with the reason for the

claim;

- 12.4.2. to assume liability for the freight costs;
 - 12.4.3. that payment will not be withheld pending settlement of any defects; and
 - 12.4.4. not to dispose of the Goods prior to the repair or replacement of any defects or returns (excluding errors relating to pricing).
- 12.5. If the Customer returns Goods to the Company under clause 12.1.3, the Company may, in its sole discretion, repair or replace the Goods, or re-perform the services, or re-fund the price of the Goods to the Customer.

13. RESTRICTION ON USE OF GOODS

- 13.1. The Customer agrees not to export, sell or sublicense the Goods for use outside New Zealand without obtaining the Company's prior written consent in each case.
- 13.2. All software supplied to the Customer under these Terms is supplied subject to the terms and conditions of the software licence specified by the licensor(s) of such software, and the Customer agrees to comply with such terms and conditions at all times.

14. HEALTH AND SAFETY

- 14.1. The Customer and the Company agree to ensure that the parties comply, as applicable, in all respects with the relevant provisions of the Health and Safety at Work Act 2015, associated regulations and any relevant Codes of Practice at all times when performing obligations pursuant to these Terms.

15. PRIVACY OF INFORMATION

- 15.1. The Customer agrees that the Company may obtain information about the Customer from the Customer or any other person in the course of business, including credit assessment and debt collecting, and the Customer consents to any person providing the Company with such information.
- 15.2. The Customer agrees that the Company may use any information the Company has about the Customer relating to the Customer's creditworthiness and, subject to any confidentiality agreement between the Customer and the Company, give that information to any other person for credit assessment or debt collection purposes or to enable the Company to exercise any power or enforce or attempt to enforce any of the Company's rights, remedies and powers under these Terms.
- 15.3. The Customer agrees that any other information collected by the Company is accessed or collected for the use in the course of the Company's business.
- 15.4. Under the Privacy Act 1993, individuals in relation to who the Company has collected Personal Information have the right to access, and correct any Personal Information held by the Company.

16. CONFIDENTIALITY

The Customer shall at all times treat as confidential all non-public information and material received from the Company and shall not publish, release, or disclose the same without prior written consent from the Company.

For clarity, confidential information includes prices.

17. FORCE MAJEURE

- 17.1. The Company shall not be liable for delay or failure to perform its obligations under these Terms if the delay or failure is caused by circumstances beyond the Company's reasonable control, including, but not limited to, revocation of licence, industrial dispute, act of God or the impossibility of obtaining materials.
- 17.2. In such event, the Company, at its option, may cancel the Contract wholly or in part or extend the time for delivery of Goods for such period as may be necessary.

18. GENERAL

- 18.1. These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and constitute the entire agreement between the Company and the Customer relating to their subject matter.
- 18.2. The Customer shall not transfer, assign or otherwise dispose of its rights or obligations under these Terms without prior written consent from the Company.
- 18.3. No failure or delay by the Company in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.
- 18.4. The Company may change these Terms at any time. Any change applies from when the Company notifies the Customer of that change.
- 18.5. All Contracts made between the Company and the Customer will be governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 18.6. Any notice given by one party to the other will be deemed to have been delivered five business days after posting to the recipient's registered office or last known address and immediately, if forwarded by facsimile or email.