1. DEFINITIONS

In this Agreement, “ACL” means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended; “Agreement” means any agreement for the provision of goods or services by Viewpark Group Pty Ltd to the Customer; “Viewpark Group Pty Ltd” means Viewpark Group Pty Ltd (ABN 31 164 523 497) and includes its subsidiaries, divisions, affiliates, associated companies and related entities; “Customer” is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement; “Customer” means the person, persons, firm or entity, if more than one, acquiring or goods or services from Viewpark Group Pty Ltd; “goods” means goods supplied by Viewpark Group Pty Ltd to the Customer and includes any goods supplied in the course of providing the services; “GST” means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 and its associated Regulations as amended; “PPSA” means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended; “services” means any installation services, maintenance services, repairs, commissioning and any other services performed by Viewpark Group Pty Ltd; and “Terms” means these Terms and Conditions of Trade.

2. Basis of Agreement
2.1 Unless otherwise agreed by Viewpark Group Pty Ltd in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer’s terms of trade or conditions of purchase (if any).
2.2 Any quotation provided by Viewpark Group Pty Ltd to the Customer for the proposed supply of goods or services is:
(a) valid for 30 days;
(b) an invitation to treat only; and
(c) valid only if in writing.
2.3 The Terms may include additional terms in Viewpark Group Pty Ltd’s quotation, which are not inconsistent with the Terms.
2.4 An Agreement is accepted by Viewpark Group Pty Ltd when Viewpark Group Pty Ltd accepts, in writing or electronic means, an offer from the Customer or provides the Customer with or performs the services.
2.5 Viewpark Group Pty Ltd reserves the absolute discretion to refuse to accept any offer.
2.6 The Customer must provide Viewpark Group Pty Ltd with its specific requirements, if any, in relation to the goods or services.
2.7 Viewpark Group Pty Ltd may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date. (a) Payment for the goods or services must be made net within 30 days of the invoice date.
(b) Viewpark Group Pty Ltd reserves the right to require the Customer.
3. Pricing
3.1 Unless specified otherwise, prices quoted for the supply of goods and performance of services exclude GST, any other taxes or duties imposed on or in relation to the goods or services, and any freight and delivery costs. In addition to payment of the price of goods and performance of the services, the Customer must pay any GST and any other taxes or duties imposed on the goods or services.
3.2 Prices for goods and services are set in accordance with Viewpark Group Pty Ltd’s prevailing price list, which is subject to change from time to time and the price payable for goods and services is the price applicable at the date of delivery of goods or services contained in the written quotation.
3.3 If the Customer requests any variation to an Agreement, Viewpark Group Pty Ltd may increase the price to account for the variation.
3.4 Where there is any change in the costs incurred by Viewpark Group Pty Ltd in relation to goods or services, Viewpark Group Pty Ltd may vary its price to take account of such change, by notifying the Customer.
4. Payment
4.1 Unless otherwise agreed in writing:
(a) Payment for the goods or services must be made net within 30 days of the invoice date.
(b) Viewpark Group Pty Ltd reserves the right to require the Customer.
(i) to make full or partial payment upon order, availability, or before delivery or provision of the goods or services;
(ii) to pay a deposit and have progress payments;
(iii) provide an irrevocable bank guarantee on uncompleted work as a condition of trade. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
4.3 Payment terms may be revoked or amended at Viewpark Group Pty Ltd’s sole discretion immediately upon giving the Customer written notice.
4.4 The time for payment is of the essence.
5. Payment Defaults
5.1 If the Customer defaults in payment by the due date of any amount payable to Viewpark Group Pty Ltd, then all money which would become payable by the Customer to Viewpark Group Pty Ltd at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Viewpark Group Pty Ltd may, without prejudice to any of its other accrued or contingent rights:
(a) claim a general lien over all the Customer’s goods in the possession of Viewpark Group Pty Ltd, and subject to giving 14 days written notice to the Customer sell the property by private treaty or public auction whichever Viewpark Group Pty Ltd in its sole discretion deems appropriate and allocate the proceeds to the repayment of its sale costs and expenses and any sum due and payable by the Customer;
(b) charge the Customer interest on any sum due at a rate of 2.5% compounding per calendar month from the due date unless accepted by agreement before and after any judgment;
(c) charge the Customer an immediate amount of the greater of $20.00 or 10% of the amount overdue for administration fees which sum shall become immediately due and payable;
(d) claim a general lien over all the Customer’s goods in the possession of Viewpark Group Pty Ltd, and subject to giving 14 days written notice to the Customer sell the property by private treaty or public auction whichever Viewpark Group Pty Ltd in its sole discretion deems appropriate and allocate the proceeds to the repayment of its sale costs and expenses and any sum due and payable by the Customer; and
(e) cease or suspend supply of any further goods or services to the Customer;
(f) by written notice to the Customer, terminate any uncompleted contract with the Customer.
5.2 Clauses 5.1(e) and (f) may also be relied upon, at Viewpark Group Pty Ltd’s option:
(a) where the Customer is a consumer and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
(b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed, in respect of its assets or any part of them which is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
6. Service Conditions
6.1 Where applicable, the Customer agrees to provide safe and secure conditions and comply with any occupational health and safety laws for Viewpark Group Pty Ltd or its sub-contractors, employees or agents to provide the services.
6.2 Viewpark Group Pty Ltd may, at its absolute discretion, opt not to provide the services if the conditions are, in its reasonable opinion, not work safe. Viewpark Group Pty Ltd will not be liable to the Customer in those circumstances.
7. Security of Property
7.1 Until Viewpark Group Pty Ltd receives full payment in cleared funds for all goods and services provided by it to the Customer, as well as all other amounts owing to Viewpark Group Pty Ltd, then all money which would become payable by the Customer to Viewpark Group Pty Ltd and subject to giving 14 days written notice to the Customer sell the property by private treaty or public auction whichever Viewpark Group Pty Ltd in its sole discretion deems appropriate and allocate the proceeds to the repayment of its sale costs and expenses and any sum due and payable by the Customer; and
7.2 Viewpark Group Pty Ltd reserves the right to require the Customer:
(a) title and property in all goods remain vested in Viewpark Group Pty Ltd and do not pass to the Customer;
(b) the Customer must hold the goods as fiduciary bailee and agent for Viewpark Group Pty Ltd;
(c) the Customer must keep the goods separate from its goods and maintain Viewpark Group Pty Ltd labelling and packaging;
(d) the Customer must hold the proceeds of any sale of the goods on trust for Viewpark Group Pty Ltd in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer’s obligations as trustee;
(e) any retention of its rights under this Agreement, Viewpark Group Pty Ltd may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Viewpark Group Pty Ltd, and for this purpose the Customer irrevocably licences Viewpark Group Pty Ltd to enter such premises and also indemnifies Viewpark Group Pty Ltd from and against all costs, claims, demands or actions by any party arising from such action.
8. Personal Property Securities Act
8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
8.2 For purposes of the PPSA, (a) terms used in clause B that are defined in the PPSA have the same meaning as in the PPSA;
(b) these Terms are a security agreement and Viewpark Group Pty Ltd has a Purchase Money Security Interest in all present and future goods supplied by it to the Customer and proceeds of the goods;
(c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
(d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which are able to be registered by Viewpark Group Pty Ltd on the Personal Property Security Register. 8.3 The security interest arising under this clause B attaches to the goods when the goods are collected or dispatched from Viewpark Group Pty Ltd premises and not at any later time.
8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, documents or other information specified under sections 95, 115, 124(4), 130, 130C(3), 132(10), 135 and 157 of the PPSA.
8.5 Viewpark Group Pty Ltd and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
8.6 To the extent permitted by the PPSA, the Customer agrees that:
(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Viewpark Group Pty Ltd will apply only to the extent that they are mandatory or Viewpark Group Pty Ltd agrees to their application in writing; and
(b) where Viewpark Group Pty Ltd has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
8.7 The Customer must immediately upon Viewpark Group Pty Ltd request:
(a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
(b) procure from any person considered by Viewpark Group Pty Ltd to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Viewpark Group Pty Ltd may at any time require.
8.8 Viewpark Group Pty Ltd may allocate amounts received from the Customer in any manner Viewpark Group Pty Ltd determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods.
8.9 For the purposes of section 275 of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.
9. Security
9.1 The Customer agrees to charge its property, both real and personal, and any future interests in property, as security in favour of Viewpark Group Pty Ltd for any debt owing to Viewpark Group Pty Ltd, under these Terms and Conditions of Sale. Viewpark Group Pty Ltd and authorizes Viewpark Group Pty Ltd to register a caveat in respect of any real property, or a debenture where the Customer is a corporation.
9.2 If requested to do so by Viewpark Group Pty Ltd, the Customer must execute a mortgage (or mortgages) of any real property the subject of clause 8.1.
9.3 The Customer irrevocably authorizes Viewpark Group Pty Ltd and each director and secretary of Viewpark Group Pty Ltd as its attorney for the purpose of giving effect to clause 9.1 and 9.2, including executing, as the Customer’s attorney, the mortgages and debentures referred to, and affecting their registration.
10. Delivery

10.1 The Customer acknowledges that:
(a) the Customer must collect the goods within 7 days of being advised that they are ready. If the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand;
(b) the price is adjusted pro rata to the discrepancy.

10.2 Unless otherwise agreed in writing by Viewpark Group Pty Ltd, the Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

10.3 The Customer must take delivery of the goods tendered notwithstanding that the quantity delivered is not the same as the quantity ordered provided:
(a) the discrepancy in quantity is no more than 5% or
(b) the price is adjusted pro rata to the discrepancy.

10.4 If it is agreed that Viewpark Group Pty Ltd will arrange for delivery of the goods:
(a) the Customer must provide reasonable and proper access to the location specified for delivery;
(b) the Customer authorises Viewpark Group Pty Ltd to subcontract delivery in its absolute discretion;
(c) the Customer indemnifies Viewpark Group Pty Ltd against any loss or damage suffered by Viewpark Group Pty Ltd in connection with the delivery of employee as a result of delivery, except where the Customer is a consumer and Viewpark Group Pty Ltd has not used due care and skill;
(d) if delivery is attempted and is unable to be completed, the Customer is deemed to have taken delivery of the goods and the Customer is liable for storage charges payable monthly on demand;

10.5 If Viewpark Group Pty Ltd does not receive forwarding instructions sufficient to enable it to dispatch the goods, the Customer shall be deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand;
and
(f) a completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

10.6 Storage Charge will apply if goods not taken with 30 days of requested completion date.

11. Risk and Insurance

11.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from Viewpark Group Pty Ltd premises.

11.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations. 11.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties, caused in whole or in part by failure of any equipment or parts supplied by Viewpark Group Pty Ltd, whether such goods are used singularly, or in combination with other goods, substances, or any process, unless recoverable from Viewpark Group Pty Ltd on the failure of any statutory guarantee under the ACL.

12. Acknowledgments

12.1 The Customer acknowledges that:
(a) it has not made known, either expressly or by implication, to Viewpark Group Pty Ltd any purpose for which it requires the goods or services and it has the sole responsibility of satisfying that the goods or services are suitable for the use of the Customer.

13. Performance of Agreement

13.1 The Customer guarantees under the Agreement:
(a) that the goods or services are of a kind ordinarily acquired for personal, domestic or household purposes or use or application.

14. Liability

14.1 Except as the Terms specifically state, or as contained in any express warranty provided in writing by Viewpark Group Pty Ltd, the Customer will indemnify Viewpark Group Pty Ltd and its employees, agents, officers, contractors and subcontractors for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

15. Cancellation

15.1 If Viewpark Group Pty Ltd is unable to deliver (where applicable) or provide the goods or services, then it may cancel the Customer’s order (even if it has been accepted) by written notice to the Customer.

16. Returns and Exchanges

16.1 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.
16.2 Any notice must be in writing and hand delivered personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received on posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

17. Customer’s rights or remedies against Viewpark Group Pty Ltd for failure of a statutory guarantee under the ACL.

17.1 If Viewpark Group Pty Ltd is unable to deliver (where applicable) or provide the goods or services, then it may cancel the Customer’s order (even if it has been accepted) by written notice to the Customer.

18. Force Majeure

18.1 Subject to clause 17.2 and 17.5, Viewpark Group Pty Ltd will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless:
(a) the Customer delivers a written complaint to Viewpark Group Pty Ltd with full details within 10 days of inspection of goods specifying the shortage or defect; and
(b) Viewpark Group Pty Ltd is, upon receipt of the complaint, given an opportunity to inspect the goods and the Customer has failed to provide the Customer with the necessary evidence of shortage or defect.

19. Force Majeure

19.1 Viewpark Group Pty Ltd is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accidents, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Viewpark Group Pty Ltd may suspend or terminate the Agreement by written notice to the Customer.

20. Miscellaneous

20.1 The Customer acknowledges that:
(a) it has not made known, either expressly or by implication, to Viewpark Group Pty Ltd any purpose for which it requires the goods or services and it has the sole responsibility of satisfying that the goods or services are suitable for the use of the Customer.

21. Privacy

21.1 Viewpark Group Pty Ltd is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to Viewpark Group Pty Ltd in accordance with the Privacy Act.

21.2 Viewpark Group Pty Ltd requires that the Customer comply with the National Privacy Principle in connection with any personal information supplied it in connection with this Agreement.