

TERMS & CONDITIONS OF SALE

Viewpark Group Pty Ltd



1. DEFINITIONS

In these Terms:

"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;

"Consumer" 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, jointly and severally if more than one, acquiring 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 and 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:

- valid for 30 days;
- an invitation to treat only; and
- valid only if in writing.

2.3 The Terms may include additional terms in Viewpark Group Pty Ltd' 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 the goods or performs the services.

2.5 Viewpark Group Pty Ltd has 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 and 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.

- Payment for the goods or services must be made nett within 30 days of the invoice date.
- 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' 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 any such change, by notifying the Customer.

4. Payment

4.1 Unless otherwise agreed in writing:

- Payment for the goods or services must be made nett within 30 days of the invoice date.
- Viewpark Group Pty Ltd reserves the right to require the Customer:
 - to make full or partial payment upon order, availability, or before delivery or provision of the goods or services;
 - to pay a deposit and have progress payments; or
 - provide an irrevocable bank guarantee upon order to Viewpark Group Pty Ltd; as specified in its quotation.

4.2 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 sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

5. Payment Default

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:

- 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;
- charge the Customer interest on any sum due at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after and before any judgment;
- 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;
- charge the Customer for, and the Customer must indemnify Viewpark Group Pty Ltd from, all costs and expenses (including without limitation all legal costs and disbursements on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;

(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' option:

- where the Customer is a natural person 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
- 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 action 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. Passing 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 by the Customer:

- title and property in all goods remain vested in Viewpark Group Pty Ltd and do not pass to the Customer;
- the Customer must hold the goods as fiduciary bailee and agent for Viewpark Group Pty Ltd;
- the Customer must keep the goods separate from its goods and maintain Viewpark Group Pty Ltd' labelling and packaging;
- 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;
- in addition to its rights under the PPSA, 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 the purposes of the PPSA:

- terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
- 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 the proceeds of the goods;
- The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- 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 Securities Register. 8.3 The security interest arising under this clause 8 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, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 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:

- 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
- 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:

- do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- 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(6) 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 party 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 Terms & Conditions. 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 company.

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 appoints 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 Unless otherwise agreed, 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.

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, its sub-contractors or employees 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;
- (e) 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.
- (g) 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 arising out of the use or possession of any of the goods sold 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 relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Viewpark Group Pty Ltd in relation to the goods, their use or application.
- (b) 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 itself that the goods or services are suitable for the use of the Customer.

13. Performance of Agreement

13.1 Any period or date for delivery of goods or performance of services stated by Viewpark Group Pty Ltd is an estimate only and is not a contractual commitment. 13.2 Viewpark Group Pty Ltd will use its reasonable endeavours to meet any estimated dates for delivery of the goods or performance of services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

13.3 If Viewpark Group Pty Ltd cannot complete the services by any estimated date, it will complete the services within a reasonable time.

14. Liability

14.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

14.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Viewpark Group Pty Ltd for failure of a statutory guarantee under the ACL. 14.3 If the Customer on-supplies the goods to a consumer and:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A (1) of the ACL is the absolute limit of Viewpark Group Pty Ltd' liability to the Customer;
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Viewpark Group Pty Ltd' liability to the Customer; howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

14.4 If clause 14.2 or 14.3 do not apply, then other than as stated in the Terms or any written warranty statement Viewpark Group Pty Ltd is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party. 14.5 Viewpark Group Pty Ltd is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

14.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be excluded, restricted or modified.

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.

15.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Viewpark Group Pty Ltd once that order has been accepted. 15.3 Viewpark Group Pty Ltd, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

16. Specifications

16.1 All specifications, drawings, illustrations descriptive matter and particulars contained in Viewpark Group Pty Ltd' catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

16.2 All drawings, descriptive matter and particulars supplied, remain Viewpark Group Pty Ltd' property and are to be returned to Viewpark Group Pty Ltd on demand. The Customer must not publish or communicate to any person or publish or permit them to be copied or communicate them to any other person without Viewpark Group Pty Ltd' prior consent in writing.

16.3 It is the purchases responsibilities to ensure that all quotes, orders and order confirmations meet the specification. Viewpark Group Pty Ltd does not guarantee that any equipment offered will meet the specifications.

17. Order Cancellation

17.1 In the event of an order being cancelled a 15% restocking /engineering fee is payable on the same terms as the order. If manufacturing of the equipment has been commenced the purchaser shall be liable for the full cost of the order to that day.

17.2 Any made to order goods are non-returnable and have no refunds available.

18. Returns and Exchanges

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 investigate the complaint before any further dealing with the goods.

18.2 When any shortages, claim for damage or non-compliance with the Agreement specifications is accepted by Viewpark Group Pty Ltd, Viewpark Group Pty Ltd may, at its option, replace the goods, or refund the price of the goods or re-supply the services.

18.3 Subject to clause 17.5 Viewpark Group Pty Ltd will not under any circumstances accept goods for return that:

- (a) have been specifically produced, imported or acquired to fulfil the Agreement or special Customer order;
- (b) have been altered in any way;
- (c) have been used;
- (d) are discontinued goods no longer stocked by Viewpark Group Pty Ltd;
- (e) 1 month or more has elapsed from delivery; or
- (f) are not in their original condition and packaging.

18.4 The Customer must:

- (a) obtain Viewpark Group Pty Ltd' prior written approval for return of goods;
- (b) pay to Viewpark Group Pty Ltd a re-stocking fee equal to 25% of the original invoice cost; and
- (c) pay all freight charges incurred in the return of goods.

18.5 If the Customer is a Consumer, nothing in this clause 17 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

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, accident, 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 law of Victoria from time to time governs the Terms. The parties agree to the nonexclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

20.2 Viewpark Group Pty Ltd' failure to enforce any of these Terms shall not be construed as a waiver of any of Viewpark Group Pty Ltd' rights.

20.3 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.

20.4 A notice must be in writing and handed 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 upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

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 to it in connection with this Agreement.