

# Standard Terms & Conditions of Sale

## 1. INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

**“Affiliate”** has the meaning given to the term

**“related body corporate”** in the Corporations Act 2001 (Cth).

**“Confidential Information”** means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to Visionflex’s business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

**“Confirmation Letter”** means the written confirmation from Visionflex to the Customer that it offers loaned Goods on the terms set out in these Standard Terms

**“Contract”** means the contract for the supply of Goods from Visionflex to the Customer on these Standard Terms formed in accordance with clause 3.3.

**“Customer”** means the person(s), firm or company who purchases the Goods from Visionflex.

**“Delivery”** means the delivery of the Goods in accordance with 7.1.

**“Goods”** means any goods agreed in the Contract to be supplied to the Customer by Visionflex.

**“Intellectual Property”** means all intellectual and industrial property rights and interests of whatever nature throughout the world, whether registered, unregistered or unregistrable, and includes copyright and analogous rights, and rights in respect of, or in connection with, trade marks, designs, patents, inventions, circuit layouts, trade secrets, know-how and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967, whether now existing or created after the date of the Contract.

**“Visionflex”** means Visionflex Pty Ltd (ABN 58 600 815 021).

**“Maximum Quantity of Products”** means the maximum quantity of Goods which Visionflex will loan to the Customer (as set out in the Confirmation Letter).

**“Order”** means an order:

(a) to purchase Goods from Visionflex; or

(b) for Goods to be supplied by Visionflex under a loan in accordance with clause 16 respectively,  
as applicable, however made.

**“Personnel”** of a party includes an employee, servant, agent, officer or director of that party.

**“PPSA”** means the Personal Property Securities Act 2009 (Cwlth).

**“Single-Use Product”** means any product sold by Visionflex that is labelled “For Single Use” or “Single Use Only” or “Not For Re-Use” or with language similarly indicating that the product is intended to be used once only or a reasonable person would assume that such product is for single use.

**“Standard Terms”** means the terms and conditions set out in this document.

1.2 **(include)** The verb “include” (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and the words “including”, “for example” or “such as” do not limit what else is included.

1.3 **(person)** The word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency.

1.4 **(successors)** A reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

1.5 **(singular includes plural)** The singular includes the plural and vice versa.

1.6 **(headings)** all headings in these Standard Terms are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Standard Terms.

1.7 **(legislation)** a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

1.8 **(time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

## 2. ENTIRE AGREEMENT

2.1 Subject to any variation under clause 27.4:

(a) the Contract will be on these Standard Terms to the exclusion of, and will prevail over, all other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document); and

(b) no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.

2.2 Visionflex may revise these Standard Terms at any time by uploading the revised terms on its website which is then taken as notice to the Customer and the revised standard terms will be immediately effective for all Orders made after notice has been given to the Customer.

### 3. ORDERS

3.1 Each Order will be deemed to be an offer by the Customer to purchase Goods from Visionflex, subject to these Standard Terms.

3.2 By the Customer: signing and returning an Order; electronically accepting (including via email) an Order; or sending their purchase order following receipt of the Order to Visionflex:

(a) the Customer acknowledges that it has read, understood, and agrees to be bound by the terms and conditions set forth in these Standard Terms; and

(b) a Contract is formed between the parties. A separate Contract is formed in relation to each Order.

3.3 The Customer may only cancel a Contract for Goods with Visionflex's prior written consent.

3.4 Visionflex may withhold delivery of Goods (whether or not an Order has been accepted) for non-payment of any amounts due and payable or a breach of these Standard Terms by the Customer.

### 4. CANCELLATION

If Visionflex advises the Customer that it will be unable to deliver the Goods and, upon receipt of such notice by the Customer, the Contract in relation to such Goods only will be terminated without incurring any liability to Visionflex, except that Visionflex will reimburse the Customer for the amounts received by Visionflex from the Customer for such cancelled Goods.

### 5. PRICES

5.1 The pricing of the Goods will be as per the invoice provided to the Customer by Visionflex (**Invoice**).

5.2 Unless the Customer has received the Invoice for the Goods from Visionflex, prices for Goods are subject to change without notice to the Customer.

5.3 GST:

(a) All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.

(b) Where a payment or consideration for the Goods is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by Visionflex to the Customer.

(c) Payment of GST must be made at the same time as payment is due on the Invoice for the Goods.

### 6. PAYMENT

6.1 Goods will be invoiced by Visionflex to the Customer as soon as possible following the Contract.

6.2 Payment of the Invoiced amount is to be made to Visionflex by the Customer by no later than the date specified on the Invoice and, unless otherwise agreed by Visionflex in writing, prior to the dispatch of the Goods.

6.3 Payment of the Invoiced amount must be made to Visionflex without set-off or deduction of any kind.

6.4 All payments payable to Visionflex under the Contract shall become due immediately upon termination of the Contract despite any other provision.

6.5 If the Customer fails to pay an amount on the due date, all amounts then owing to Visionflex immediately and automatically will become due and payable. The Customer will pay Visionflex interest on all overdue amounts calculated daily from the due date for payment at the rate which is 4% above the Reserve Bank of Australia's Interbank Overnight Cash Rate.

### 7. DELIVERY TERMS AND CHARGES

7.1 Delivery is Ex Works under Incoterms 2023 and occurs when the Goods are loaded at the location designated by Visionflex.

7.2 The Customer will at its sole cost and expense be responsible for loading charges, delivery to port and Customer location, export duty/taxes and custom clearance, origin terminal handling charges, loading of carriage, freight charges, insurances, destination terminal handling charges, delivery to designation, unloading at destination and import duty/taxes and customs clearance.

7.3 A receipt for the Goods signed on behalf of the Customer will be conclusive evidence of Delivery. If Visionflex books the courier on behalf of the Customer, confirmation of loading the Goods from the courier will be conclusive evidence of Delivery.

7.4 Any dates specified by Visionflex for Delivery of the Goods are intended to be an estimate only. Time for Delivery shall not be made of the essence.

7.5 Visionflex may make partial Deliveries or Deliveries by instalments in any amount it may determine and each such partial Delivery or

Delivery by instalments shall be deemed to be a separate Contract and these Standard Terms shall apply to each partial delivery or delivery by instalments as if such partial amount comprised the "Goods" under the Contract.

- 7.6 On Delivery, the Goods are deemed to be accepted by the Customer and the Customer cannot return the Goods, except in accordance with clause 11.
- 7.7 Where an Order has more than one scheduled Delivery, each separate Delivery may incur a handling and administration fee.

## 8. RISK/TITLE

- 8.1 Title in the Goods and the risk of damage to or loss of Goods passes to the Customer on receipt, in clear funds, by Visionflex, of the full Invoiced amount for the Goods, together with any additional charges, as set out in the relevant Invoice and any interest due.

## 9. RECOVERY OF GOODS

- 9.1 Until title of the Goods has passed to the Customer, the Customer must:
  - (a) hold the Goods on behalf of Visionflex;
  - (b) store the Goods (at no cost to Visionflex) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Visionflex's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition insured on Visionflex's behalf for their full price against all risks to the reasonable satisfaction of Visionflex. On request the Customer shall produce the policy of insurance to Visionflex.
- 9.2 Where payment is overdue in whole or in part for any of the Goods, Visionflex or its nominee may (without prejudice to any of its other rights) recover and / or resell the Goods and may enter the Customer's premises or any other place where the Goods are stored by the Customer for that purpose without being liable for any loss or damage caused.
- 9.3 The Customer grants to Visionflex an irrevocable license and authority to enter the Customer's premises to recover the Goods, provided that Visionflex may only recover and resell for its own account sufficient of the Goods to satisfy all the Customer's unpaid liabilities in respect of the Goods and cost of resale.

## 10. PPSA

- 10.1 If Visionflex determines that the Contract is or contains a security interest for the purposes of the PPSA, the Customer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Visionflex asks and considers necessary for the purposes of:
  - (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
  - (b) enabling Visionflex to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Visionflex; or
  - (c) enabling Visionflex to exercise rights in connection with the security interest.

## 11. RETURNS

- 11.1 Visionflex will accept return of the Goods if the Customer complies with Visionflex's returns policy applicable to the Goods (as amended from time to time) and available at Schedule 1 of these Standard Terms.
- 11.2 The Customer is responsible for all costs of delivery applicable to the return of the Goods to Visionflex, unless Visionflex agrees that the Goods are defective.
- 11.3 If any of the Goods delivered were damaged, defective, or incorrect when delivered, then the Purchaser must give Visionflex written notice of that fact within 2 Business Days following Delivery.
- 11.4 If it is determined by Visionflex that the Customer was not entitled to return the Goods, Visionflex may charge a re-stocking of 15% of the price of the Goods(s) together with any other charges (including freight) incurred by Visionflex in connection with such return. If a handling fee was charged at the time of the purchase of the Goods, the customer will not be entitled to a refund or credit of that handling fee.

## 12. STORAGE, HANDLING AND USE OF GOODS

- 12.1 The Customer acknowledges that Visionflex is the manufacturer of specific Goods and a reseller of other Goods.
- 12.2 It is the Customer's responsibility and the Customer warrants that it will:
  - (a) ensure that all applicable health and safety regulations and therapeutic goods requirements are observed and other appropriate steps taken in relation to the storage, handling and the use of the Goods once they are Delivered to the Customer; and
  - (b) the Customer will locate and thoroughly review information and terms and conditions associated with or that apply to the Goods, on potential hazards relating to the Goods and to bring such information to the attention of its Personnel, sub-contractors, visitors and customers.

- 12.3 The Customer warrants that it will, at all times, comply with the terms and conditions specific to any Goods. It is not the responsibility of Visionflex to provide the Customer with any terms and conditions or other information relating to any Good(s).
- 12.4 Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of Goods into storage.

### 13. COUNTERFEIT GOODS

- 13.1 The Customer acknowledges there are safety and regulatory concerns in relation to medical products that are counterfeit or not approved or packaged for sale in the country of the Customer. To safeguard the welfare of patients and the reputation of Visionflex, its Affiliates and Visionflex's and its Affiliates' products, the Customer warrants it will only purchase Visionflex's manufactured medical devices (**Visionflex's Devices**) and any peripheral devices that are used in conjunction with Visionflex's Devices from Visionflex or distributors authorised expressly by Visionflex.
- 13.2 The Customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of Visionflex and/or the manufacturer of the Good attached to or placed upon the Goods.
- 13.3 Visionflex may refuse to continue to supply its products to the Customer if Visionflex considers on reasonable grounds that the Customer has breached this clause 13. Any such refusal will be without prejudice to Visionflex's rights to claim damages and indemnities from the Customer.

### 14. USE AND RESALE OF GOODS

- 14.1 The Goods are sold to the Customer for use solely by the Customer. For safety reasons, the Customer is not entitled to resell, license, lease or provide any Goods to any other party, without the prior written consent of Visionflex (which it is entitled to withhold at its absolute discretion).
- 14.2 The Customer must not make any representations or advertise the Goods in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements and must not make any representations or advertise the Goods in a way which promotes or suggests the unauthorised use of medical devices.

### 15. PRODUCT RECALLS

In the event that any of the Goods are subject to a recall, field safety alert or hazard alert by either (i) Visionflex or (ii) any governmental agency or regulatory authority, the Customer will take all reasonable steps to assist with (including identification of any party to whom the Goods have been supplied by the Customer), and will comply with any reasonable directions given by Visionflex, in respect of such matter.

### 16. LOANED EQUIPMENT

- 16.1 Subject to Visionflex's prior written confirmation and agreement (including the Maximum Quantity of Goods), Visionflex will loan to the Customer the Goods specified by the Customer in an Order for the loan of Goods provided that:
- (a) the number of Goods required by the Customer in the Order will not result in the Customer having possession of more than the Maximum Quantity of Goods; title in the Goods remains vested with Visionflex; and
  - (b) risk in the Goods passes to the Customer in accordance with clause 8.1.
- 16.2 The Customer must, in respect of the Goods loaned to the Customer by Visionflex:
- (a) store the Goods (at no cost to Visionflex) on the Customer's premises;
  - (b) store each Good to use according to the Good's labelling and other manufacturer conditions supplied with the Good;
  - (c) maintain the Goods in satisfactory condition;
  - (d) as soon as practical after Goods have been used, consumed, lost or damaged place a purchase order with Visionflex for such Goods including the relevant code and quantity; and
  - (e) indemnify Visionflex for any loss or damage of the Goods while they are in possession of the Customer.
- 16.3 Title to any loaned Goods will not pass to the Customer.

### 17. SINGLE USE PRODUCTS

- 17.1 The Customer acknowledges that a Single-Use Product may be used once only and no right or license is conveyed with respect to such Single-Use Products beyond the right to use the products once and only once.

### 18. CEASING SUPPLY

- 18.1 Visionflex may cease to supply Goods on a loan basis to the Customer on 14 days written notice.
- 18.2 Upon cease of supply of the Goods or termination of any continuing loan arrangements with Visionflex, the Customer must in respect of Goods supplied to the Customer under loan arrangements with Visionflex, at Visionflex's election:
- (a) return the Goods to Visionflex at the Customer's cost; or

(b) permit Visionflex to collect the Goods in the Customer's possession or control.

18.3 The Customer must use all reasonable endeavours to assist Visionflex to exercise its right under 18.2(b).

## 19. INDEMNITY

19.1 The Customer indemnifies Visionflex, its Affiliates, and it's and their Personnel against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any negligent act or omission, unlawful conduct or other misconduct by the Customer or its Personnel relating to the Contract or the Goods.

## 20. WARRANTIES

20.1 Other than as specifically set out in these Standard Terms, all warranties implied by statute or law are excluded to the full extent permitted by law.

20.2 When purchased by a Consumer, the Goods come with consumer guarantees that cannot be excluded under the Australian Consumer Law (ACL). In this case, the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer's rights under this clause 20 are in addition to any statutory rights it may have as a consumer.

## 21. LIMITATION OF LIABILITY

21.1 To the extent permitted by law, the liability of Visionflex for a breach of a warranty or condition under this Contract or implied by statute or law about the Goods sold, is at the option of Visionflex, limited to:

- (a) the replacement of the Goods;
- (b) the supply of equivalent Goods;
- (c) repair of the Goods;
- (d) payment of the cost of replacing the Goods;
- (e) payment of the cost of acquiring equivalent Goods; or
- (f) payment of the cost of having the Goods repaired.

21.2 Under no circumstances will Visionflex be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with the Contract or the Goods or any party's actions or omissions under the Contract and/or these Standard Terms.

## 22. INTELLECTUAL PROPERTY

22.1 The Customer is not permitted to use any of Visionflex's, its Affiliates' and/or the Goods manufacturers' Intellectual Property for any purpose without Visionflex's or any of its Affiliates' prior written consent. No right, title, interest or license in any of Visionflex's or its Affiliates' intellectual property is granted to the Customer under these Standard Terms or the Contract.

## 23. FORCE MAJEURE

23.1 The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

## 24. CONFIDENTIALITY

24.1 The Customer shall keep in confidence and shall not, without securing Visionflex's prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:

- (a) to its employees or representatives requiring the information for the purposes of the Order, provided they are made aware of these restrictions; or
- (b) if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies); or
- (c) if the Customer is required to do so in connection with legal proceedings relating to the Goods or the Contract.

## 25. DISPUTE RESOLUTION

25.1 Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.

25.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).

## 26 GENERAL

- 26.1 **(notices)** Notices, consents and other communications in connection with the Contract must be in “writing” and hand-delivered, sent by pre-paid post or sent by electronic message to the other party’s representative identified in the Contract. Notices given under this Contract will be deemed to be received:
- (a) if hand-delivered – at the time the delivery is made;
  - (b) if sent by pre-paid post – three Business Day after posting;
  - (c) if sent by electronic message, when the sender receives an automated message confirming delivery or eight hours after the message has been sent (as recorded on the device from which the sender sent the message) unless the sender receives an automated message that the electronic message was not delivered or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the electronic message was not delivered,
- unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.
- 26.2 **(assignment)** The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Visionflex.
- 26.3 **(no exclusivity)** The relationship between the parties is not one of exclusivity.
- 26.4 **(waiver/amendment)** Subject to clause 2.2, the terms of these Standard Terms may only be amended by agreement of the parties in writing which specifically refers to this clause 26.4. Any variation to these Standard Terms or representations about the Goods which do not satisfy this clause 26.4 shall have no effect. A waiver of rights under this agreement shall only be effective if given in writing to the other party and specifically refers to this clause 26.4.
- 26.5 **(exercise of rights)** Visionflex may exercise a right, remedy or power in any way Visionflex considers appropriate. If Visionflex does not exercise a right, remedy or power at any time, this does not mean that Visionflex cannot exercise it later.
- 26.6 **(survival)** Any term of these Standard Terms and the Contract survives the expiry, cancellation or termination of the Contract if required to give effect to it.
- 26.7 **(severability)** If the whole or any part of a provision of these Standard Terms is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these Standard Terms has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Standard Terms or is contrary to public policy.
- 26.8 **(no partnership)** Nothing contained or implied in these Standard Terms or the Contract will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is the joint venturer, the partner, principal or the agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.
- 26.9 **(construction)** No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these Standard Terms or any part of it.
- 26.10 **(PPSA notice)** Neither party need give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 26.11 **(governing law)** The laws of the NSW will govern the Contract and the parties submit to the exclusive jurisdiction of the courts of NSW.

## SCHEDULE 1 - VISIONFLEX RETURNS POLICY

### SCOPE:

This Visionflex Returns Policy articulates our position on product returns and is in addition to your rights under relevant Laws. It outlines our commitment to you to ensure you are satisfied with the Goods you have purchased from Visionflex.

### 1. GOODS RETURN AUTHORISATION NUMBER

- 1.1 All Good returns requested by a customer from Visionflex must have a Goods Return Authorisation (GRA) number, which can be obtained by telephone or email through Visionflex' Customer Service team.
- 1.2 Please be aware that the issuance of a GRA number is not a commitment that the returned Goods will be accepted or that a remedy or credit will be provided. Once a GRA number has been provided, Goods must be returned to Visionflex for assessment within fourteen (14) days of receiving the GRA number, or a new GRA number must be obtained.

### 2. ACCEPTABLE RETURNS

- 2.1 Visionflex will accept the return of goods under the following circumstances:
  - (a) the goods were defective and not of acceptable quality (**Defective Goods**); or
  - (b) the goods were Damaged in Transit; or
  - (c) in accordance with other express conditions in the Contract.
- 2.2 Visionflex will not accept return of any Goods without a GRA number.

### 3. DEFECTIVE GOODS

- 3.1 The Customer is entitled to a replacement or refund of a Defective Good(s). Customer is also entitled to have the Goods repaired or replaced if the Goods are defective.
- 3.2 Where goods are claimed to be defective, they must be isolated and as part of obtaining the GRA number, the Visionflex' product specialist must be advised as to the nature of the alleged defect.
- 3.3 Upon receipt of the Goods by Visionflex, the Goods will be assessed (either by Visionflex or returned to the manufacturer for evaluation), in a reasonable timeframe and, if proven to be defective, an appropriate remedy (refund/credit, replacement or repair) will be provided.
- 3.4 In order to allow for an accurate evaluation of the Goods, Visionflex is obliged to return the goods to the manufacturer in a clean, decontaminated and, wherever possible, sterile condition.

### 4. GOODS DAMAGED IN TRANSIT

- 4.1 Goods damaged in transit may only be returned if Visionflex has agreed in writing to take the risk and responsibility for the shipping of Goods and has engaged the transport of the Goods to the Customer's location.
- 4.2 Subject to Clause 4.1, where damage is evident upon receipt of Goods by the Customer, Customer must provide photo evidence from the same day of receipt of delivery. A copy of such documentation must then be provided to the Visionflex' customer service team when requesting a GRA number (in accordance with the above) to allow for the return of the goods to Visionflex.
- 4.3 Goods that have been Damaged in Transit must be returned to Visionflex within 14 days of issuance of their relevant GRA number. Visionflex reserves the right to reject the return of any goods returned after 14 days from issuance of GRA number and no refund, replacement or credit will be provided to the customer for such goods.
- 4.4 If the Defective Goods are not returned in accordance with the requirements in Clause 3 and Visionflex (at its discretion) elects to receive these Goods, the Customer will be subject to a re-stocking charge of 15% of the relevant invoiced value of the Goods to cover costs incurred by Visionflex.