

Visual Communications Company, LLC ("VCC") Terms and Conditions

1. **"Agreement"** means these Terms and Conditions ("**Terms and Conditions**"), together with any purchase order ("**Order**"), and any other master or similar agreement signed by the buyer named on the Order ("**Buyer**") and VCC, including any distribution, reselling or similar agreement (the "**Master Agreement**"). The Agreement governs any purchase and sale between VCC and Buyer involving VCC's products (the "**Products**"). All Orders must be in writing, completed and signed by Buyer or its authorized agent and faxed to VCC at 800-521-0844 or emailed to VCC at vccsales@vcclite.com (EDI is also available). Orders may be in any format but must contain, at a minimum, the following information: Date/ Order Number/ Billing & Shipping Address(es)/ Shipping Instructions / Payment Terms (as quoted by VCC prior to submission of the Order)/ Quantity, Description and Price (in U.S. Dollars) of Each Product / Contact Person, Phone, Fax Number and Email Address/ and Requested Delivery Date. Pricing set forth in the Order shall be consistent with the prices as quoted to Buyer by VCC, which quoted prices shall be valid for 60 days from the date of such quotation unless otherwise stated on the face of such quotation.

2. **Acceptance.** An Order will not bind VCC until VCC accepts the Order in writing. At the sole discretion of VCC, all Orders are subject to submission of a credit application by Buyer to VCC and credit approval by VCC. If VCC fails to give written notice to Buyer within five (5) business days of the delivery of the Order, such Order will be deemed rejected by VCC. VCC reserves the right to reject any Order for any reason at its sole and absolute discretion. Once accepted by VCC, Buyer may not modify, rescind or cancel any order, in whole or in part, without VCC's written consent. Partial shipment of an Order will not constitute acceptance of the entire Order absent written acceptance of the entire Order. VCC will provide reasonable notice to Buyer of any backorders, including estimated time of shipping. If demand exceeds VCC's production of Products, VCC may allocate its output according to its sole and absolute discretion.

3. **Delivery.** VCC will use commercially reasonable efforts to meet any delivery date specified in an accepted Order. All shipments of Products will be FOB Otay Mesa, CA, USA unless otherwise agreed in writing by Buyer and VCC. VCC will use commercially reasonable efforts to comply with Buyer's request for a specific carrier; however, if Buyer's designated carrier fails to promptly accept the delivery of Products, VCC may tender shipment to an alternate carrier. Risk of loss and title to the Products will pass to Buyer, and delivery and acceptance will be deemed to occur, upon VCC's delivery to the carrier. VCC will not ship any Products to any embargoed country or any country subject to export controls under the embargo or export laws of the United States.

4. **Price.** All prices and charges are in U.S. Dollars. Unless otherwise specified herein, the purchase prices, charges, and other amounts payable by Buyer for the Products will be those specified in the Order. Buyer shall provide Buyer's shipping carrier's account number to VCC, and VCC shall charge Buyer's carrier shipping account with shipping costs. VCC shall not be responsible for payment of any shipping costs, taxes, customs, duties, tariffs or any other amounts payable to any government from FOB Otay Mesa, CA to Buyer's designated shipping destination. Buyer will pay, and indemnify and hold VCC harmless from, any shipping costs, sales, use, excise, import or export, value added or similar tax and all government permit or license fees and all customs, duty, tariff and similar fees levied upon the delivery of Products or provision of services under the Agreement, and any costs associated with the collection or withholding thereof, including penalties and interest.

5. **Payment.** Terms of payment will be net thirty (30) calendar days from the date of shipment. Buyer may be subject to accrued interest at a rate of 1.5% per month (18% per annum), or the highest rate permitted by law (if less), determined and compounded daily from the date due until the date paid. Buyer will be responsible for all costs and expenses (including expert, collection agency, check verification company and attorneys' fees, expenses, and costs) incurred by VCC in enforcing its rights to all payments under the Agreement. Shipments will be suspended on any account that is 50 days or more past due, and/or any account in excess of the VCC approved credit limit, without notice to Buyer. VCC's acceptance of any payment in any amount less than the amount due will in no way limit VCC's right to recover the balance due, nor limit VCC's right to pursue any other right or remedy. VCC may at any time change the terms of payment (including, but not limited to, requiring payment prior to shipment or by letter of credit) or take other action if VCC, in its sole discretion, believes that Buyer's financial condition or other circumstances so warrant. All payments shall be remitted by (i) ACH, (ii) wire transfer in accordance with wire instructions provided to Buyer by VCC. Any wire transfer fees or other charges by the sending and receiving bank shall be the sole responsibility of Buyer, or (iii) check mailed to:

Visual Communications Company, LLC
12780 Danielson Court, Suite A
Poway, CA 92064

6. **Limited Warranty and Remedy.** VCC warrants that the Products will be free from all defects in materials and workmanship for a period of one (1) year from the date of delivery. The warranty will not apply to any Product that: (a) has not been assembled, operated and maintained in accordance with its applicable instructions and/or Datasheets; (b) has been repaired or altered by unauthorized persons; or (c) has been misused, abused, damaged, disassembled or subjected to uses for which they were not intended. This warranty does not apply to expendable or disposable items. If Buyer gives VCC notice that any purchased Products fail to comply, in all material respects, with the foregoing warranties, VCC will, at its sole option and subject to VCC's review and

confirmation of such failure to comply, repair or replace such Products. Any other repairs requested will be at repair rates quoted to Buyer by VCC.

7. **Return Policy.** Buyer must contact VCC before returning any Products and receive a Return Merchandise Authorization (RMA). Returns must be shipped freight prepaid to VCC and must include the RMA number provided to Buyer by VCC. VCC shall not be responsible for any damage incurred in transit back to VCC. Any return may be subject to a re-stocking charge.

8. **DAMAGED OR LOST PRODUCTS AND SHORTAGES.** If Buyer receives a shipment from VCC in carton(s) that are visibly damaged, the damage should be noted on the carrier's freight bill or receipt, a copy of which should be retained by Buyer along with the original carton(s) and all packaging materials and parts intact. Buyer must notify VCC at 800-522-5546 within ten (10) calendar days of receipt of the damaged shipment or a shipment containing a shortage, or in the event of a lost shipment, as soon as Buyer determines that a shipment has been lost. VCC will not be responsible for any damage or loss caused after VCC's delivery of the shipment to the carrier.

9. **DISCLAIMER AND RELEASE.** THE WARRANTIES, OBLIGATIONS, AND LIABILITIES OF VCC AND THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE. BUYER HEREBY WAIVES, RELEASES AND DISCLAIMS ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF VCC AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF BUYER AGAINST VCC, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, INCLUDING CLAIMS BASED UPON NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY; AND (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR INFRINGEMENT. BUYER ACKNOWLEDGES AND AGREES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES SET FORTH HEREIN. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

10. **LIMITATIONS OF LIABILITY.** IN NO EVENT WILL VCC OR ITS SUPPLIERS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (COLLECTIVELY, "**DAMAGES**") ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE PRODUCTS REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF VCC HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. VCC'S TOTAL CUMULATIVE LIABILITY FOR ANY LOSSES OR ANY DIRECT DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE PRODUCTS REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF VCC HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, WILL NOT EXCEED THE AMOUNT PAYABLE BY BUYER TO VCC FOR THE PRODUCTS PURCHASED PURSUANT TO THE ORDER, OR THE AMOUNT PAID BY BUYER, IF THE CLAIM IS BROUGHT BY BUYER. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. THE FOREGOING REMEDIES ARE EXCLUSIVE, AND BUYER WAIVES AND RELEASES ALL OTHER WARRANTIES, OBLIGATIONS, AND LIABILITIES OF VCC AND ALL OTHER REMEDIES, CLAIMS, AND RIGHTS THAT BUYER MAY HAVE RELATING IN ANY WAY TO THE PRODUCTS COVERED BY THESE TERMS AND CONDITIONS, WHETHER ARISING FROM CONTRACT, WARRANTY, STRICT LIABILITY OR TORT OR FROM OUR NEGLIGENCE, TORT, OR OTHER FAULT, INCLUDING CLAIMS FOR LOSS OF OR DAMAGE TO THE PRODUCTS.

11. **Intellectual Property Rights.** Except as otherwise specifically agreed in writing between VCC and Buyer, VCC and its suppliers own all right, title and interest in and to the Products and all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing ("**Intellectual Property Rights**") embodied therein. No title to or ownership of any Intellectual Property Rights related to any Products will be transferred to Buyer pursuant to the Agreement.

12. **Confidential Information.** VCC may disclose to Buyer certain trade secret, proprietary or confidential information ("**Confidential Information**"). Except as otherwise authorized by VCC in writing, Buyer will use such Confidential Information only for the purposes for which it is disclosed by VCC, will not disclose it to any third party and will take appropriate steps to protect it.

13. **Excused Performance.** VCC will not be responsible for or be considered to be in breach of or default under the Agreement on account of any cause beyond VCC's reasonable control or not occasioned by any act or omission of VCC (including, but not limited to, VCC's inability, after due and timely diligence, to procure materials, parts, equipment or services). If VCC fails to deliver Products or is delayed in delivering Products for any other reason, and such failure or delay continues for more than sixty (60) days after the delivery date originally confirmed by VCC, Buyer's sole remedy shall be an option to cancel the Order by written notice to VCC without assessment of a cancellation charge.

14. **Compliance with Laws.** Buyer will comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority, in its performance of the Agreement and its use of the Products including, without limitation, the U.S. Foreign Corrupt Practices Act. Buyer further agrees that Buyer will not export or re-export or cause to be exported or re-exported any Products in any way to or through any embargoed country or to or through any country subject to export controls under the embargo or export laws of the United States.

15. **Severability.** If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

16. **Waiver.** The failure of either party to the Agreement to insist upon strict performance of any covenant or condition thereof, in any one or more instances, will not be construed as a waiver or relinquishment of any such covenant or condition.

17. **Assignment.** Neither the Agreement nor any right or duty under the Agreement may be transferred, assigned or delegated by Buyer, by operation of law or otherwise, without the prior written consent of VCC.

18. **Amendment.** No amendment or modification of the Agreement will be valid unless set forth in a written instrument signed by the parties to such Agreement.

19. **Applicable Law; Court Venue and Jurisdiction.** The Agreement will be governed in accordance with the laws of the State of California, U.S.A., without reference to its conflict of laws principles. The venue for all disputes arising from or relating to the Agreement will be within the state or federal courts located within San Diego County, California; the parties consent to such exclusive jurisdiction and waive objections to venue therein.

20. **Entire Agreement.** The Agreement (together with any incorporated exhibits, schedules or attachments) constitutes the entire agreement, and supersedes any and all prior agreements, between VCC and Buyer with regard to the purchase and sale of the Products. Any additional and/or conflicting terms and conditions in any acknowledgement or other document issued or provided by either party are hereby specifically rejected unless expressly accepted, in writing, by an authorized officer or employee of VCC, or as otherwise permitted in these Terms and Conditions. Notwithstanding the foregoing, if Buyer is an authorized distributor or reseller of VCC, in the event of any conflict between the Master Agreement and these Terms and Conditions, the terms of the Master Agreement shall control.