

## CREDIT ACCOUNT APPLICATION



Trading name \_\_\_\_\_

Trading as \_\_\_\_\_ Sole trader / Partnership / Company / Other

Delivery address \_\_\_\_\_

Postal address \_\_\_\_\_

Contact name \_\_\_\_\_

Phone number \_\_\_\_\_ Mobile Phone Number

Facsimile number \_\_\_\_\_ Private Phone Number

Email address \_\_\_\_\_

Date commenced business \_\_\_\_\_

Estimated monthly purchases \_\_\_\_\_ Number of employees

Trade references 1 \_\_\_\_\_ Phone Number

2 \_\_\_\_\_ Phone Number

3 \_\_\_\_\_ Phone Number

4 \_\_\_\_\_ Phone Number

Bank \_\_\_\_\_

Accountant \_\_\_\_\_

Solicitor \_\_\_\_\_

Sole traders/partnerships: \_\_\_\_\_

Name(s) in full \_\_\_\_\_

Address(es) \_\_\_\_\_

Companies: \_\_\_\_\_

Registered office \_\_\_\_\_

Issued Capital \_\_\_\_\_ Company No. \_\_\_\_\_

Charges \_\_\_\_\_

Image Centre Contact \_\_\_\_\_

I certify that the above information is correct and that I am authorised to accept your conditions on behalf of the Buyer named above. I confirm that I have read and understood your Terms and Conditions relating to the supply of Goods and Services overleaf and agree that all orders will be made on the basis of those Terms and Conditions.

I authorise you to obtain at any time any information you may require to process our application for a credit account from any person or entity, including, without limitation, any information which may be required to determine our creditworthiness.

I understand that payment is to be made on or before the 20th of the month following invoice date, and that failure to adhere to these terms may result in credit facilities being withdrawn. I agree that should any portion of our account not be paid when due, we shall pay interest on the unpaid portion as set out in the Terms and Conditions.

I, the undersigned, guarantee the performance by the Buyer of its obligations including payment of any unpaid account.

Date \_\_\_\_\_

Signature \_\_\_\_\_

# TERMS AND CONDITIONS

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VSS agrees to supply Goods and Services to the Buyer upon the following Terms and Conditions:

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## 1. Definitions

1.1 The following words shall have the meanings specified:

Buyer - the company, person, business or entity named as the Buyer on the Order Form, or any agent or licensee of the Buyer.  
Contract - the agreement between VSS and the Buyer as set out on the Order Form (including these Terms and Conditions). This Contract overrides any other agreement between VSS and the Buyer, and applies to all orders made after these Conditions have been sent, or otherwise brought to the notice of the Buyer.

Goods - print graphics and design in hard copy and electronic form, compact discs, preliminary, experimental and creative work, and all instructions, manuals, or other materials supplied to the Buyer or any third party at the request of the Buyer.

VSS – Visual Safety Solutions.  
Order Form - VSS's application or order form, or if there is no such form, VSS's invoice.

Services – poster printing, poster leasing, consulting and design services or other services supplied to the Buyer or any third party at the request of the Buyer.

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## 2. Quotations

2.1 Every quotation or estimate given by VSS: (a) Must be checked by the Buyer to determine whether its instructions have been correctly interpreted and VSS shall not be liable for any misinterpretation of those instructions; (b) Lapses if not accepted by the Buyer within 30 days of being given; is subject to withdrawal or amendment at any time by VSS prior to its acceptance by the Buyer; (c) Relates to the particular specifications required by the Buyer and the Buyer will be charged for any additional work resulting from any alteration in those specifications; (d) Is conditional on an over or under supply margin of 10%.

2.2 Printing quotations or estimates are based on printed, typewritten, common electronic format or other good copy. The Buyer will be charged for any additional work required to produce copy in this condition.

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## 3. Proofs

3.1 VSS will provide electronic

proofs of Goods and Services for the Buyer's approval, if requested. The Buyer is deemed to have accepted the final format of Goods and Services supplied by VSS once the Buyer has approved the proof (if any) provided by VSS. The Buyer will be charged for any author's corrections after the first electronic proof.

3.2 The Buyer agrees that a print production may not match a colour proof due to variances in substrates and proof preparation methods but VSS will use reasonable endeavours in this regard.

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## 4. Supply by Buyer

4.1 The Buyer agrees that any discs, images or other items supplied by it to VSS must be of a quality and quantity acceptable to VSS. VSS will not be liable for any deviation from a quotation or substandard work resulting from the Buyer's provision of unacceptable items. The Buyer may be charged for any additional work required to supply commercially acceptable Goods or Services.

4.2 All items supplied by the Buyer to VSS shall: (a) Subject to clause 4.3, remain the property of the Buyer; be sufficient to cover any spoilage (as agreed with VSS); (b) Be held at the risk of the Buyer and VSS will not be responsible for any insurance cover for such items.

4.3 VSS will be entitled to dispose of any items which are not collected by the Buyer within 12 months of delivery of the relevant Goods or the supply of the relevant Services.

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## 5. Electronic Storage

5.1 Unless otherwise specified by VSS in writing, the Buyer shall have no right or title to any material stored by VSS by electronic means, including on disc. VSS may agree, however, to duplicate or transfer electronic material stored by it to the Buyer at the Buyer's cost.

5.2 Unless otherwise specified by the Buyer in writing, VSS shall be entitled to assume that all discs, and other forms of electronic storage supplied to VSS by the Buyer are copies of the originals.

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## 6. Payments

6.1 Subject to clause 6.2 every amount invoiced shall be paid in cleared funds to VSS, without any set off or deduction, by the 20th of the following month.

6.2 Where any Goods or Services are to be supplied to a licensee of the Buyer which is resident outside New Zealand, such licensee must

forward the amount invoiced by VSS to VSS by direct credit and in cleared funds to VSS's New Zealand bank account (as notified to the licensee from time to time) before VSS will be obliged to supply the relevant Goods or Services to the licensee.

6.3 GST, and any other taxes or levies, are not included in the Contract price and are payable by the Buyer to VSS in addition to the Contract price.

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## 7. Action on Breach

7.1 If the Buyer breaches its Contract with VSS, then VSS may, without notice and without prejudice to other rights it may have at law or under this Contract, take all or any of the following steps: (a) Retain moneys paid and demand payment of all amounts due to VSS even if time of payment has not fallen; (b) Withhold deliveries of Goods or supply of Services ordered by the Buyer, or sell the Goods to a third party; (c) Charge interest for late payment on the amount invoiced at 2% per month calculated on a daily basis from the date payment is due until full payment is actually made, compounding annually; (d) Require the Buyer to pay all expenses and legal costs incurred or suffered by VSS in collection of the overdue account (the charging of this sum does not imply the granting of an extension of credit); (e) Terminate this Contract.

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## 8. Delivery

8.1 The Buyer is liable for all freight and delivery costs, and transit insurances.

8.2 If the Buyer does not, or indicates that it will not, take delivery of the Goods or the supply of the Services, then the Goods and Services are deemed to have been delivered when VSS was willing to deliver them. All excess handling, storage, insurance and other charges directly or indirectly incurred by VSS as a result are payable by the Buyer in accordance with this Contract.

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## 9. Risk and Insurance

9.1 Despite the granting of credit, passing of risk, giving of possession, or delivery to the Buyer, both legal and equitable title in the Goods shall be retained by VSS until the full purchase price of any Goods or Services has been paid.

9.2 Risk in the Goods passes from VSS to the Buyer when the Goods are delivered, or deemed to have been delivered, to the Buyer or its agent pursuant to this Contract. Until property in the Goods passes

to the Buyer, the Buyer shall keep the Goods insured in the name of VSS and the Buyer for their respective rights and interest, and VSS shall be entitled to receive all insurance proceeds which are payable in respect of the Goods.

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## 10. Right to Repossess and Enter Premises

10.1 Where the Buyer owes VSS any money, the Buyer grants to VSS's employees or agents an irrevocable right to enter any premises controlled by the Buyer or where the Goods are located and repossess the Goods. VSS may resell any repossessed Goods and retain the proceeds of that sale. Any shortfall in the overdue moneys is to be a debt owed by the Buyer to VSS.

10.2 VSS shall incur no liability as a result of any loss resulting from the exercise of any power of re-entry. The Buyer shall indemnify VSS, its servants and agents, for any liability arising as a result of the repossession, and the Buyer shall pay all costs incurred by VSS.

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## 11. Warranty from VSS

11.1 For a term of 30 days from the date of delivery or deemed delivery of the Goods or Services (Warranty Period), VSS warrants that it will make good any defects in the Goods if the defect is discovered and a written claim received by VSS during the Warranty Period. To the extent that the Contractual Remedies Act 1979 applies to this Contract, sections 6-10 inclusive of the Contractual Remedies Act 1979 are expressly excluded.

11.2 The warranty in clause 11.1 shall not apply in the following circumstances: (a) While the Buyer is in breach of the Contract; (b) Where VSS is not given reasonable opportunity and facilities to investigate the claim (VSS may, at the Buyer's cost, require the Buyer to return the relevant Goods to it for examination or, where the Goods have been incorporated into another item, inspect the Goods on site); (c) Where the defects result from fair wear and tear, accident, or improper use, storage, maintenance, installation or operation by the Buyer or the Buyer's agent, of the Goods or any items in relation to which any Services have been supplied; (d) Where the defects result from any attempt to repair any of the Goods by persons not authorised by VSS to effect those repairs.

11.3 Subject to clause 11.1, to the maximum extent permitted by law, all warranties, descriptions, representations or conditions as to fitness, suitability for a purpose,

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# TERMS AND CONDITIONS

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merchantability or otherwise, whether expressed or implied by law, trade custom or otherwise, are expressly excluded.

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## 12. Personal Property Securities Act 1999

12.1 The Buyer grants to VSS a security interest in all of the Goods and all of the Buyer's present and future rights in relation to any Goods as continuing security for the payment of any amount invoiced and the performance of all obligations contained in this Contract.

12.2 The Buyer shall do all things and provide all information as VSS may require for the purpose of more satisfactorily securing to VSS the Goods, the payment of any amount invoiced and all obligations contained in this Contract and ensuring that VSS has a perfected first ranking security interest in the Goods and any proceeds.

12.3 The Buyer warrants that all information provided by or on behalf of the Buyer was true and accurate as at the date of this Contract and there are no facts or circumstances which have not been disclosed to VSS which would make that information untrue, inaccurate or misleading.

12.4 VSS shall, at all times that the Buyer has any outstanding obligations to VSS, have the right to enter the premises where the Goods are stored and remove them without being responsible for any damage caused, whether directly or indirectly, in doing so.

12.5 The Buyer (a) agrees that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 133 and 134 of the Personal Property Securities Act 1999 shall apply to this Contract or the security under this Contract; (b) waives all its rights under sections 121, 125, 129, 121, 132 of the Personal Property Securities Act 1999; and (c) waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.

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## 13. Consumer Guarantees Act/Fair Trading Act

13.1 The Buyer confirms that it is not a consumer for the purposes of the Consumer Guarantees Act 1993 and is acquiring the Goods and Services for business purposes. The Buyer shall not do anything, or omit to do anything, the result of which may give rise to liability for VSS under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or otherwise, and shall indemnify VSS for any such liability and all

costs and expenses in respect of any claim.

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## 14. Privacy Act 1993

14.1 The Buyer authorises VSS to collect at any time and from any person or body personal information concerning the Buyer (Personal Information). Personal Information will be collected by VSS for processing the Buyer's application for a credit account and operating that account, including, without limitation, determining the creditworthiness of the Buyer, conducting VSS's business, responding to any requests VSS may receive about the Buyer's creditworthiness, and notifying any credit agency of the Buyer's application for a credit account or any default by the Buyer on that account, and enabling the credit agency to maintain its accounting records.

14.2 The Buyer acknowledges and agrees that Personal Information may be held or used by VSS, or disclosed by VSS to any person or body, for any of the above purposes. Under the Privacy Act 1993, the Buyer may have access to, and request the correction of, Personal Information.

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## 15. Termination

15.1 Without limiting the generality of any other clause in this Contract, VSS may, without notice and without prejudice to other rights VSS may have at law or under this Contract, terminate this Contract if the Buyer: (a) Becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration; (b) Being a partnership, is dissolved, threatens or resolves to dissolve, or is in jeopardy of dissolving; (c) Being a natural person, dies; ceases, or threatens to cease, to conduct its business in the normal manner.

15.2 Upon termination of this Contract, clause 7.1 applies.

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## 16. Liability

16.1 VSS shall not be liable for any loss or damage, including any loss of profits or any consequential, indirect or special loss, damage or injury of any kind, suffered by the Buyer or anyone else arising directly or indirectly from any breach of any of VSS's obligations resulting from, or in connection with, any Contract or from any cancellation of any Contract or from any negligence on the part of VSS, or VSS's servants, agents or contractors.

16.2 If for any reason VSS does have liability to the Buyer or any third party, the maximum extent of that liability is not to exceed the

amount paid by the Buyer to VSS for the Goods or Services the subject of that claim and any further liability shall be met by the Buyer.

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## 17. Warranty from Buyer

17.1 The Buyer warrants that: (a) It has not relied upon any representation made by VSS which is not expressly stated in this Contract or upon any descriptions, illustrations or specifications contained in any document, including publicity material, produced by VSS; (b) In manufacturing or dealing with any Goods or supplying any Services according to the specifications of the Buyer VSS shall not infringe any patent, registered or unregistered trade mark, design, copyright or other intellectual property rights (IP Rights) of any third party, and VSS will not be required to print any material which is defamatory or illegal in any respect.

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## 18. Indemnity

18.1 The Buyer agrees to indemnify, and keep indemnified, VSS against any action, claim, demand, liability, damages, costs (including legal costs) or expenses arising out of or in connection with: (a) Any alleged infringement of any IP Rights of any third party, or any alleged production of illegal or defamatory material, resulting from VSS manufacturing or dealing with any Goods, or supplying any Services, according to the specifications of the Buyer; (b) Any claims by the Buyer's customers, agents, servants or contractors or any other person whatsoever in respect of any damage, injury or loss; (c) Any breach by the Buyer of its obligations under this Contract; (d) Any wilful, unlawful or negligent act or omission by the Buyer; (e) Loss or corruption of data or damage (whether of VSS or any third party) caused by any computer virus supplied (knowingly or unknowingly) by or on behalf of the Buyer.

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## 19. General

19.1 VSS will not be responsible for any loss or corruption of data stored in, or used with, the Goods, damage or loss (including consequential loss) caused by any computer virus however contracted.

19.2 Any dispute or difference between VSS and the Buyer regarding this Contract or its termination which cannot be settled amicably and in good faith shall, at the instance of either party, be referred for mediation to an

accredited mediator appointed by the Chairman for the time being of the New Zealand branch of LEADR (Lawyers Engaged in Alternative Dispute Resolution). Each party agrees to diligently and in good faith co-operate and participate in the mediation process. The costs of the mediator shall be shared equally between VSS and the Buyer or as the mediator sees fit.

19.3 Failure or delay to exercise a right under this Contract shall not operate as a waiver of that right. Waiver of any default or breach of this Contract shall not be interpreted as a waiver of any subsequent breach. No waiver by VSS is effective unless it is in writing signed by VSS.

19.4 No variation to the Contract shall be valid unless signed by an authorised officer of VSS.

19.5 The Buyer may not assign this Contract without VSS's prior written consent.

19.6 This Contract is governed by New Zealand law. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.

19.7 VSS shall not be liable for any errors or omissions resulting from a misinterpretation of any verbal instructions given by the Buyer at any time.

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PLEASE RETAIN THESE TERMS & CONDITIONS FOR YOUR REFERENCE

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