

## CONDITIONS OF SALE - EFFECTIVE 1/7/2003

**VanEyk Pty Ltd**  
**18 Kelly Court**  
**Warranwood Vic 3134**  
**Australia**

**Ph: (+61 3) 9876 2390**  
**Fax: (+61 3) 9923 6060**  
**Email: accounts@vaneyk.net**  
**ABN: 29 064 455 278**

### 1. DEFINITIONS

"Seller" shall mean and include Van Eyk Pty Ltd, its employees and Agents.

"Buyer" shall mean and include the person or legal entity (e.g. company) named herein and any servant, agent, partner, contractor or employee of that person and in the case of two or more persons shall refer to each of them jointly and severally. Any notice in writing required to be given hereunder shall be deemed to be duly given if posted, faxed or sent via e-mail to the last known address of the addressee.

### 2. GENERAL

- (i) The Buyer agrees that all contracts made with the Seller shall be deemed to be made in the State or Territory in Australia in which the delivery of the goods takes effect and the Buyer agrees to submit to the jurisdiction of the appropriate Court in that State or Territory.
- (ii) Any variation or cancellation of order must be approved in writing by the Seller.
- (iii) The Buyer authorises the Seller to sub-contract delivery in its absolute discretion.

### 3. BUYER'S STATUTORY RIGHTS

To the fullest extent permitted by law, these conditions of Sale shall exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Buyer or the liabilities imposed upon the Seller by any condition or warranty implied by any Commonwealth, State or Territory legislation or ordinance made there under.

### 4. WARRANTIES

Subject to Condition 3, the Seller warrants that the goods supplied shall be of merchantable quality. All goods are supplied subject to this warranty only and any liability arising out of or in respect of the supply, resupply, use of or reuse whether singly or otherwise of these goods, howsoever arising and whether for consequential loss or otherwise, and including any liability the Seller may otherwise have had by virtue of any representation, warranty, condition or term, whether express or implied by law is hereby excluded.

### 5. LIMITATIONS OF LIABILITIES

- (i) The Seller shall not be liable for any claim, loss or expense whatsoever or howsoever arising which is made after the expiration of seven days from the date of delivery.
- (II) The Seller shall not be subject to any liability, which exceeds the replacement value of the subject goods. The Seller will not be liable for any contingent, consequential or punitive damages arising in any way whatsoever. The Buyer acknowledges this express limitation of liability and agrees to limit any claim accordingly.
- (III) The Seller shall not be liable for any claim, loss or expense sustained or incurred by any person arising in any way as a result of the unavailability of goods or any delay in delivery of the goods or any part thereof or any failure to deliver the goods or part thereof.
- (IV) Any advice, recommendation, information or representation provided by the Seller as to the quality or performance of the goods or their suitability for a particular purpose or otherwise in relation to the goods is given in good faith but without liability or responsibility on the part of the Seller. The Buyer acknowledges that it has not relied upon or been included by any representation by the Seller.

### 6. ADVICES

Subject to Condition 3, any advice, recommendation, information, assistance or service provided by the Seller in relation to goods sold or manufactured by it or their use or application is given in good faith and is believed by the Seller to be appropriate and reliable. However, any advice, recommendation, information, assistance or service provided by the Seller in relation to any goods supplied by the Seller is provided without liability or responsibility on the part of the Seller.

### 7. DELIVERY

The Seller will make all reasonable efforts to have the goods delivered to the Buyer on the date agreed between the parties as the Delivery Date, but the Seller shall be under no liability whatsoever should delivery not be made on this date.

### 8. RISK

- (a) Unless otherwise agreed in writing, the risk in the goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.
- (b) Without in any way limiting the operation of the foregoing, upon delivery of the goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer hereby covenants and where appropriate warrants with the Seller that, the storage and handling of the goods, the Buyer shall comply with all relevant environmental laws and regulations, and those or on the acquisition of the goods will possess and comply with all necessary and/or relevant permits and licences, and the Buyer shall ensure that the Buyer is familiar with and adheres to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the goods.

### 9. PROPERTY

- (a) Property in the goods shall remain with the Seller and the Seller reserves the right to dispose of the goods until such time as -
  - (I) full payment is made for all amounts owing by the Buyer to the Seller so that the Buyer's total indebtedness to the Seller under these Conditions of Sale is discharged; or
  - (II) The Buyer sells the goods to his customers in the ordinary course of business;
- (b) If the Buyer fails to pay any amount of the Buyer's total indebtedness to the Seller under these Conditions of Sale when it is due to the Seller, or, event of default as specified in subclause (c) hereof occurs the Seller may without notice and without prejudice to any of its other rights and remedies recover and/or re-sell the goods or any of them and may enter upon the Buyer's premises or agents for that purpose.
- (c) Until full payment is made the Buyer shall store the goods in a way that clearly manifests in the Seller's title.
- (d) The Buyer acknowledges that until his total indebtedness under these Conditions of Sale to the Seller is discharged he holds the goods as bailee of the Seller and that a fiduciary relationship exists between them.

### 10. PRICE

Unless otherwise agreed in writing, the price charged shall be the price ruling at the date of delivery. Any price indications or price lists are subject to alteration to price ruling at the Delivery Date.

### 11. FORCE MAJEURE

Deliveries may be totally or partially suspended by the Seller during any period which the Seller may be prevented or hindered from delivering by the Seller's normal means of supply or delivery by normal route through any circumstances outside reasonable control, including but not limited to strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery. However, during the period of total or partial suspension of delivery the Buyer may purchase elsewhere at its own cost and risk, such quantities of alternative goods as may be necessary to cover its requirements during such period in substitution for the goods not delivered by the Seller. Whether or not the Buyer makes these arrangements the Seller shall not be under any liability in respect of such suspension, and in particular the Seller shall be under no obligation to delivery at any future date any goods not delivered during the period of suspension.

### 12. INVOICING AND PAYMENTS

- (i) Are due without deductions when stipulated by the Seller and if not stipulated all due by the end of the month following invoicing date unless otherwise agreed in writing.
- (ii) All payments made in Australian currency, unless the Seller otherwise agrees in writing to accept other currencies.
- (iii) The Seller may charge the Buyer interest on any overdue payments at the rate of interest set from time to time under Penalty Interest Rates Act 1955 (VIC).
- (iv) Unless expressly stated by the Seller, prices quoted or agreed includes Sales, Goods and Services, Value Added, Customs or any other applicable Government Taxes or Duty.
- (v) Australian clients will be issued an appropriate Tax Invoice for all deliveries.

### 13. PAYMENT DEFAULT AND LIMIT

- (a) Subject to clause 12(b), and unless otherwise agreed expressly in writing the terms of payment shall be net monthly, on or before the due date as per the Statement of Account, which is issued monthly by the Seller. If:
    - (i) The Buyer makes default in any payment.
    - (ii) The Buyer commits any act of bankruptcy or being a company passes a resolution for its winding up.
    - (iii) A company, any of the events referred to in Section 460 of the Corporations Law occur.
    - (iv) The Buyer breaches any terms covenant in any other contract agreement or understanding between the Buyer and the Seller.
  - (v) There is any contract agreement or understanding between the Seller and any related company (as that term is defined under the Corporations Law) or guarantor of the Buyer, and the related company or the guarantor of the Buyer breaches any terms covenant or condition of such contract agreement or understanding.
  - (vi) Where the related company or any guarantor of the Buyer does or commits any act, matter or thing which if it, he or she were the Buyer would be a breach of these terms and conditions, or
  - (vii) a Receiver or a Receiver and Manager of the Buyer is appointed:  
Then all monies owing and outstanding to the Seller on any account whatsoever and irrespective of whether the due dates as per the Statement of Account has occurred shall become immediately due and payable. In addition the Seller may without prejudice to its other rights either suspend further deliveries, require payment in advance for all such deliveries or terminate any contract or agreement made forthwith by written notice to the Buyer.
- (b) Notwithstanding clause 12 (a) the Seller may at all times at its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore, review, alter or terminate the Buyer's credit limit or terms without notice. Without limiting the generality of Clause 3 above, the decision of the Seller shall be final and the Seller accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.

### 14. FUTURE DEALING

Unless otherwise agreed to in writing by the Seller and notwithstanding any terms appearing in documentation provided by or on behalf of the Buyer the terms appearing herein shall be incorporated by implication into all agreements by the Seller to supply the Buyer with goods.

### 15. CONTAINERS

- (a) Containers in which goods are delivered and for which a deposit charge is made, remain the property of the Seller and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the Buyer and at the Buyer's expense, to the factory or store of the Seller from which the goods were delivered, the full amount of the deposit will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store.
- (b) Containers in which goods are delivered and for which a separate price is shown on the face of the invoice are, unless otherwise specified thereon sold with the goods and their price as shown on the invoice must be paid with the price of the goods. If they are returned in good order and condition by the Buyer at the Buyer's expense to the Seller or store from which the goods were delivered within three months from the date of invoice, the Seller will repurchase the said containers from the Buyer for their full invoice price. The Seller may offer less than the full invoice price for containers repurchased after the expiration of three months from the date of invoice.
- (c) In the case of containers which are received at a factory or store of the Seller otherwise than in good order and condition, only such part of the deposit of their invoice price as in the opinion of the Seller is reasonable, having regard to their actual condition, will be allowed to the Buyer.

### 16. PALLETS

At all times the Seller retains the right of possession of any pallets used for delivery of the goods and the Buyer agrees to indemnify the Seller in respect of any pallets not returned in good order and condition to the Seller within 1 month of delivery of the goods.

### 17. WEIGHT

In the absence of a proven defect in the Seller's system of weighing, the weights of goods sold hereunder shall be the last weight determined by the Seller's system at weighing prior to delivery.