

General Terms of Sale and Delivery of Visplay Inc.

(last update: January 2019)

1. 1. General

- 1.1 Sales, deliveries and other services by Visplay Inc. („Visplay“) shall be made exclusively on the basis of these General Terms of Sale and Delivery („Terms of Delivery“). Unless modified by Visplay, these Terms of Delivery shall also apply to all future transactions with the customer (the „Customer“). Any modification hereto must be agreed to in writing by Visplay. Unless otherwise agreed to in writing by Visplay, the Terms of Delivery set forth herein shall prevail in the event any differing terms are submitted by Customer in connection with any order or otherwise. Such Customer terms are hereby rejected in their entirety. By placing any order for Goods, the Customer agrees to these Terms and Conditions of Sale. Any other terms or conditions which may at any time be indicated in the Customer’s order form or otherwise (whether oral, typed, written or printed) shall be null and void and of no effect, even if not expressly objected to by Visplay.
- 1.2 All orders are subject to written acceptance by Visplay. Oral agreements or promises are only valid if they have been confirmed by Visplay’s authorized representatives in writing. Notwithstanding any prior acceptance of an order by Visplay, Visplay shall have no obligation to deliver the goods (the „Goods“) or services (the „Services“) if Customer is in breach of any of its obligations hereunder, or any other agreement between Customer and Visplay, at the time Visplay’s performance was due.
- 1.3 Any order of the Customer may be accepted by Visplay in whole or in part. Every order of the Customer delivered to Visplay or its agent will be binding on the Customer unless and until it is rejected in writing by Visplay, and may not be cancelled, withdrawn or modified by the Customer, however, in the event of a partial acceptance by Visplay, the Customer will no longer be bound with respect to the parts of the order not accepted by Visplay.

2. Description of Goods, Offer Documents, Reservation of Right of Modification

- 2.1 Information provided in sales catalogues, price lists, brochures and any other informative literature provided by Visplay to Customer as well as any other descriptions of the Goods to be delivered shall under no circumstances constitute a warranty for any specific quality of the Goods; any such warranty must explicitly be agreed in writing.
- 2.2 Visplay shall retain any ownership rights, copyrights, name rights and industrial property rights to all documents and other items including cost estimates, drawings, models, samples and software made available to Customer. These items may only be made available to third parties if they are not marked as confidential and shall be returned to Visplay on demand without undue delay.
- 2.3 Customer shall be liable to Visplay for any and all damages resulting from a disclosure of documents or other items marked as confidential provided by Visplay to Customer to a third party without having been authorized to do so by Visplay. A breach of any of the promises or covenants contained herein will result in irreparable and continuing damage to Visplay for which there will be no adequate remedy at law, and Visplay shall be entitled to injunctive relief and/or a decree for specific performance, in addition to any such other relief to which Visplay may be entitled (including monetary damages or other relief). Customer specifically acknowledges and agrees that to the extent posting of a bond or other security by Visplay is a prerequisite to any injunctive or other equitable relief sought by Visplay, Customer will not seek to require Visplay to post a bond or other security in excess of the minimum stated by statute or other law.
- 2.4 Visplay retains the right to modify the design and material to the extent the agreed function and optical appearance of the Goods are not changed hereby in Visplay’s sole discretion. Any further material modifications of the Goods require Customer’s consent.

3. Delivery and Performance Periods and Dates

- 3.1 Delivery and performance periods and dates are tentative and only binding if they have been expressly confirmed by Visplay in writing. Any delivery dates specified by Visplay will be deemed to be estimates only. Under no circumstances shall Visplay have any liability whatsoever for loss of use or for any direct, indirect or consequential damages resulting from delay regardless of the reason(s). By placing an order, the Customer agrees that the time of delivery of the Goods is not of the essence, and waives any and all claims arising from any delay in delivery. Visplay reserves the right to discontinue particular Goods or lines of Goods or to substitute other goods or lines in response to production and market requirements and demands. The Customer waives any and all claims which the Customer might otherwise have for delay or failure of delivery arising out of the exercise by Visplay of any of its rights pursuant to these Terms of Delivery or agreement between the parties, including, without limitation, any claims for direct, incidental, consequential or other damages. Visplay shall not be liable for any delay in delivery, or failure to deliver, due to any cause beyond Visplay’s control, including but not limited to, fires, floods, strikes, or other labor disputes, accidents to machinery, availability of materials, acts of sabotage, riots, laws, statutes, ordinances, rules or regulations, restrictions imposed by the federal or any state government or any subdivision or agency thereof, delay in transportation or lack of

transportation facilities.

- 3.2 Any agreed delivery and performance periods shall commence upon the later of the date of the execution of the contract therefor between Visplay and Customer or the date on which Customer has delivered to Visplay all documents, permits and releases to be provided by it and has resolved any questions related to the Goods or Services to be delivered to be answered by it and has stated any details that Customer must submit in relation to any such Goods or Services, in particular the requested configuration of the Goods.
- 3.3 Delivery and performance periods are deemed complied with if all circumstances effecting the passing of risk has occurred before they expire. The same shall apply to the compliance with delivery and performance dates. Visplay shall endeavor to take a reasonable steps to meet delivery schedules will be taken by Visplay. In no event shall Visplay bear any liability resulting from the failure to deliver, or any delay in the delivery of, Goods where such delay is attributable in whole or in part to causes beyond its control. If delivery is delayed due to reasons for which Visplay is responsible, Visplay shall only be liable to the extent specified under Article 9 of these Terms of Delivery. Visplay reserves the right to make partial deliveries of Goods or render partial Services.
- 3.4 Except as otherwise specified in these Terms of Delivery or on an order confirmation, all Goods shall be sold and delivered ex works (per Incoterms 2010) at Visplay’s facility in Allentown, Pennsylvania. Irrespective of the Good’s origination, title to the Goods shall pass to Customer when Visplay has made the Goods available to Customer at Visplay’s facility in Allentown, Pennsylvania, but only to the extent of the Goods made available by Visplay to Customer. Risk of loss of the Goods shall pass or deemed to have passed to Customer at Visplay’s facility in Allentown, Pennsylvania. The Customer bears all costs and risks involved in taking the Goods from Visplay’s facility to the desired destination. Failure of Customer to notify Visplay during the period required herein shall constitute acceptance of the Goods and waiver of any non-conformity, defects, errors or shortages. For all claims relating to Goods damaged in transit or for any other claims relating to or arising out of the transportation of the Goods, Customer shall seek recovery from the carrier and Visplay has no liability to Customer for such claims.
- 3.5 In case of unforeseeable, unavoidable events that are beyond Visplay’s control, and for which Visplay does not bear responsibility, such as events of force majeure or labor disputes, the delivery and performance periods and performance dates shall be extended or postponed by the duration of such event. Visplay shall inform Customer as soon as possible about the beginning and the end of such delay. If the delay continues for more than three months or if it has been established that it will continue for more than three months, each of Visplay and Customer may terminate the contract by giving written notice to the other party. With regard to any Goods that Visplay does not produce itself, Visplay shall not be liable for any inability to procure supplies or raw materials.
- 3.6 If Customer fails to accept delivery due to reasons beyond Visplay’s control, Customer shall nonetheless make payment to Visplay. If Customer wrongfully rejects or revokes acceptance of the Goods or fails to make payment due on or before delivery, or repudiates with respect to all or part of the contract for the Goods shipped, Visplay may withhold delivery, or stop delivery of the Goods or cancel the contract and/or sue for damages at Visplay’s exclusive option. [If Customer causes a delay in the delivery of the Goods or any part thereof, Visplay, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes Visplay substantial inconvenience, Visplay has the right to cancel delivery of the Goods whose delivery is delayed. Visplay reserves the right to retrieve any expenses or damages resulting from such delays, including but not limited to storage costs in the amount of 2 % of the market price of the Goods per month.] In the event Customer requests postponement of delivery beyond the date that Visplay intended to deliver the Goods, then Visplay may (at its option) transfer the Goods to a storage facility, which Goods shall be stored at such facility at Customer’s cost, expense and risk. In such event, the Customer shall pay Visplay (upon three (3) days after notice is sent) for any and all costs and expenses incurred by Visplay in connection therewith, including, without limitation, insurance premiums, transportation charges, loading and unloading charges taxes, storage costs.
- 3.7 Visplay shall insure the Goods only upon the written request and at the expense of Customer for such portion of the transportation as Customer shall carry the risk of loss or damages of the Goods. Customer shall pay (within three (3) days after notice is sent) to Visplay any and all costs incurred by Visplay related to such transportation, including without limitation, insurance premiums, transportation charges, loading and unloading charges, and taxes.

4. Measurements, weights, technical data

Measurement and weights stated in the offer documents of Visplay as well as any other technical data of the Goods constitute approximate values to the extent this is due to technical reasons or customary in Visplay’s industry.

5. Prices

Unless otherwise agreed, all prices are ex works (EXW) (Incoterms 2010), Allentown, Pennsylvania and are exclusive of packaging, shipping, insurance as well as tax and other duties related to the delivery. All Payments must be made in U.S. dollars unless otherwise specified in Visplay's offer or confirmation of offer.

6. Payment Terms, Credit Standing of Customer

- 6.1 All orders will be invoiced upon shipment. Unless otherwise agreed in writing, all payments for Goods or Services shall be made without any deductions or setoffs within 30 days of the date that Visplay sent the invoice. Payment shall only be deemed to have been received after Visplay receives the full amount of such payment in immediately available funds without reservation.
- 6.2 Visplay shall be entitled to issue separate invoices for partial deliveries of Goods and/or Services.
- 6.3 Visplay shall be entitled to request prepayment if no credit insurance can be obtained for Customer or if Customer otherwise constitutes a credit risk in Visplay's sole discretion.
- 6.4 Bills of exchange shall only be accepted by Visplay as means of payment upon specific agreement between the contracting parties. Payment by bill of exchange shall only be deemed to have been affected once the full amount has been credited to Visplay's account without reservation. All costs including sales, use, excise taxes, VAT or similar taxes, and import duties shall be at the expense of Customer and shall be due immediately.
- 6.5 Payment must be made by Customer when due without offset, deduction or counterclaim regardless of any claim of Customer.
- 6.6 If Customer is in default of payment, in addition to any and all other rights or remedies available to Visplay at law or in equity (including without limitation any claims for damages), Visplay shall be entitled to demand default interest from the date that such payment was due until paid in full in the amount of the lesser of eighteen (18%) percent per annum or the maximum rate permitted by applicable law. In the event that Customer defaults under these Terms of Delivery or the agreement between the parties, then Customer shall pay (upon demand) Visplay for any and all costs and expenses incurred by Visplay (including, without limitation, attorneys' fees and disbursements and experts' fees and disbursements and court costs to collect such payments).
- 6.7 Each delivery to be made to Customer shall be subject to receipt of cash or availability of credit arrangements made by Customer with Visplay. If payment is not made in accordance with these Terms of Delivery, or if at any time in Visplay's sole and absolute judgment Customer's credit standing has been impaired, Visplay may withhold or defer delivery of any Goods to be sold hereunder until satisfactory cash or credit arrangements have been made. If Customer fails, neglects, or refuses to pay or provide Visplay with credit arrangements satisfactory to Visplay in its sole and absolute discretion, or to comply with these Terms of Delivery or the terms of any credit arrangement, then Visplay may, without waiving any other rights or remedies available to Visplay at law or in equity it may have against Customer, terminate any agreement in place without further liability on Visplay's part.
- 6.8 Unless otherwise agreed to in writing, any payments by Customer received by Visplay shall be apportioned to Customer's debts in Visplay's sole and absolute discretion.

7. Inspection and Testing, Notice of Defect, Customer's Rights in case of Defects

- 7.1 Customer shall inspect the Goods within five (5) days of receipt to verify compliance with the specifications as set forth in Customer's purchase orders and accepted by Visplay. [Damage or shortages to Goods must be noted on the Bill of Lading at the time of delivery.] In the event of any non-conformity or defect, Customer shall notify Visplay in writing within seven (7) days of such inspection. Such written notification shall specify the defect or non-conformity in detail. Customer shall notify Visplay in writing of any hidden defects within seven days (7) after the earlier to occur of the date that the Customer knew or should have known (e.g. Customer or any employee, agent or representative of Customer had constructive notice) of a problem or issue and prior to the end of the warranty period as specified in Section 8.3 below. A failure of Customer to notify Visplay of a defect or non-conformity of the Goods as stated above, shall release Visplay from any warranty obligations. The aforementioned seven days (7) notice period is deemed complied with if Customer has sent the written notice of defect in a timely manner, provided that Visplay has actually received the notice of defect sent in due time.
- 7.2 Unless otherwise agreed in writing, the Goods shall not be deemed to have a defect if the Goods do not fulfill technical or other standards applicable in the country of destination (other than the United States) or the Goods are not suitable for purposes for which comparable goods are usually used in the country of destination (other than the United States).
- 7.3 If, upon Customer's written notification of a defect pursuant to Section 7.1 above, such defect or non-conformity of the Goods is not confirmed by Visplay's review, Customer shall reimburse Visplay for all costs and expenses in connection with the inspection of such Goods. Client- how are defective goods returned - warranty returns -non-conforming returns? Who pays for return of Goods?

8. Product Warranty

- 8.1 For a period of twelve (12) months from the date of shipment to Customer, Visplay warrants to the original Customer only that all Goods are: (a) as described in Visplay's published specifications (if any) and (b) substantially free from defects in materials or workmanship.
- 8.2 The foregoing warranty is subject to and conditioned upon proper handling, transportation, installation, and use, absence of any modification, or alteration of the Goods, normal wear and tear, and Customer's care for the Goods in accordance with Visplay's instructions. All warranty claims must be made by Customer to Visplay within seven (7) days of the earlier to occur of the date that the Customer knew or should have known (e.g. Customer or any employee, agent or representative of Customer had constructive notice) of a defect, problem or issue and prior to the end of the warranty period. The aforementioned seven (7) days' notice period is deemed complied with if Customer has sent the written notice of defect in a timely manner, provided that Visplay has actually received the notice of defect in a timely manner as set forth herein.
- 8.3 If a warranty defect arises, Visplay shall, at its sole option, repair or replace the defective Goods or refund the cost hereof. Such repair, replacement, or refund shall be the sole liability of Visplay and the sole remedy of Customer in connection with a warranted defect. In no event shall any warranty claims be made more than twelve (12) months after delivery of the Goods at issue.
- 8.4 Unless expressly warranted in Visplay's order confirmation, Visplay makes no warranty that the Goods comply with applicable laws, legal requirements, regulations or specifications in any jurisdiction in which the Goods may be sold or marketed. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the Goods shall be the sole responsibility of Customer. Customer is solely responsible for compliance with all applicable laws, legal requirements, regulations or specifications in any jurisdiction relating to the use, operation, installation, maintenance and repair of the Goods.
- 8.5 No agent or employee of Visplay shall have the authority to extend the scope of this warranty or make any other representation, promise or guaranty.
- 8.6 VISPLAY MAKES NO OTHER WARRANTY OF MERCHANTABILITY OF GOODS OR OF THEIR FITNESS FOR ANY PURPOSE OR ANY OTHER EXPRESS OR IMPLIED WARRANTY. GOODS WHICH DO NOT CONFORM TO THE DESCRIPTION, SHORT IN ANY RESPECT OR WHICH ARE DEFECTIVE IN MATERIAL OR WORKMANSHIP WILL BE REPLACED, REPAIRED OR, AT VISPLAY'S OPTION, CREDIT FOR THEIR ORIGINAL PURCHASE PRICE WILL BE ALLOWED PROVIDED VISPLAY IS NOTIFIED OF SUCH DEFECT WITHIN THREE (3) DAYS AFTER DELIVERY AND CUSTOMER RETURNS SUCH GOODS IN ACCORDANCE WITH VISPLAY'S INSTRUCTIONS. THE FOREGOING CONSTITUTES CUSTOMER'S SOLE REMEDY AND VISPLAY'S SOLE OBLIGATION WITH RESPECT TO GOODS FURNISHED HEREUNDER. CUSTOMER HEREBY AGREES TO WAIVE ANY AND ALL RIGHTS OR CLAIMS AGAINST VISPLAY BY LAW OR EQUITY. VISPLAY SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, UNDER ANY CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS RESULTING FROM INABILITY TO USE THE GOODS, INCREASED OPERATING COSTS OR LOSS OF PRODUCTION, OR ANY OTHER DAMAGES, WHETHER ARISING FROM CAUSES SIMILAR OR DISSIMILAR TO THOSE ENUMERATED. CUSTOMER'S OWN MATERIAL IS NOT WARRANTED BY VISPLAY. This warranty gives you specific legal rights which may vary from state to state. Some states do not allow limitations on how long an implied warranty lasts, so the limitations above may not apply to you.

_____ Customer's initials

9. Limitation of Liability

- 9.1 In no event shall Visplay be liable for any indirect, special, incidental, consequential or punitive damages of any kind including but not limited to lost profits or revenue arising from or in any way connected to these terms of delivery, whether for breach of warranty or other contract, negligence or otherwise. Visplay's maximum liability for any claims arising from or in any way connected to those terms of delivery shall not exceed the purchase price of the goods(s) or services giving rise to the claim.
- 9.2 It is agreed and acknowledged that the provisions of these Terms of Delivery allocate the risk between Visplay and Customer in a fair and equitable manner, Visplay's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Visplay would not have agreed to these Terms of Delivery and the agreement of the parties. 9.3 If a third party, which has purchased the Goods from Customer or from one or several intermediate dealers or resellers in wholesale or retail chain, asserts claims vis-à-vis Visplay based on foreign law due to an alleged defect of the Goods, Customer shall indemnify Visplay for any claims, expenses (including without limitation, attorneys' fees and disbursements and experts' fees and disbursements), fees, or losses in connection with such third party claim, provided that the Goods were in compliance with the technical and other standards with regard to product safety applicable in the United States.
- 9.4 In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded,

the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law

10. Indemnification

- 10.1 Subject to the limitations set forth in these Terms of Delivery, Customer agrees to defend, and to hold harmless and indemnify, Visplay from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, and in each case as such costs are incurred (the „Losses“) arising from any third party claim (i) due to any use of the Goods, whether authorized or unauthorized, and irrespective of whether such claim alleges personal injury, strict or absolute liability, breach of contract or implied contract or warranty, or any other claim of any nature on any theory of recovery (except to the extent such Losses have been incurred as a direct result of a breach of Visplay's warranty, Visplay's willful and knowing infringement of the intellectual property rights of any third party, a product liability claim for which Visplay is responsible, or Visplay's gross negligence or willful misconduct), or (ii) arising out of any breach or misrepresentation of any of Customer's representations or covenants or other terms contained in these Terms of Delivery or any agreement in which these Terms of Delivery are incorporated, or (iii) arising out of the improper use, storage, handling, transportation, modification or alteration of the Goods by Customer or any third party after the risk of loss has passed to the Customer; or (iv) arising out of a design or specification which is provided by or on behalf of Customer.
- 10.2 Subject to the limitations set forth in these Terms of Delivery, Visplay agrees to defend, and to hold harmless and indemnify, Customer from and against any and all Losses arising directly or indirectly out of (i) Visplay's strict liability, gross negligence or willful misconduct with respect to any product liability claims, or (ii) any breach or misrepresentation of any of Visplay's representations or covenants or other terms contained in these Terms of Delivery or any agreement in which these Terms of Delivery are incorporated.
- 10.3 Visplay or Customer (the „Indemnitee“) shall promptly notify the party that may have indemnification obligations under this Article 10 (the „Indemnitor“) of any claim, suit or proceeding; provided, however, that any failure by such Indemnitee to provide prompt written notice hereunder shall excuse the Indemnitor only to the extent that the Indemnitor is prejudiced by such failure to give notice. The Indemnitee shall cooperate with the Indemnitor with regard to the defense of any suit or threatened suit. The Indemnitor may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the Indemnitor shall obtain the Indemnitee's prior written consent to any settlement unless the settlement involves solely the payment of money and all of such payment is payable by the Indemnitor, its insurers, and parties other than any Indemnitees.
- 10.4 The Indemnitor shall notify an Indemnitee in writing within ten (10) days of the Indemnitor's receipt of knowledge of any accident or safety incident involving the Goods which results in personal injury or damage to property, or any government or similar investigation, claim or inquiry involving the Goods. The Indemnitor shall fully cooperate with each Indemnitee in the investigation and determination of the cause of any such accident or incident, and shall make available to each Indemnitee all statements, reports and tests made by the Indemnitor or made available to the Indemnitor by others. The furnishing of such information to an Indemnitee and any investigation by an Indemnitee of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by an Indemnitee, nor shall it affect the indemnification obligations above.

11. Security Interest

- 11.1 Customer by placing its order with Visplay, grants Visplay as security for the timely payment and performance of all Customer's indebtedness to Visplay, a first priority security interest (the „Security Interest“) in the Goods following delivery thereof to Customer („Collateral“). This Security Interest shall remain in force until payment in full of the entire purchase price for the Goods and all other amounts payable to Visplay by Customer. Visplay shall be entitled to file such financing statement, continuation statements, or other Security Interest perfection statements without Customer's signature as Visplay in its sole discretion shall deem necessary or advisable to perfect the Security Interest granted hereby.
- 11.2 If so requested by Visplay, Customer shall deliver to Visplay, in form and substance satisfactory to Visplay, and duly executed as required by Visplay, such financing statements and other Security Interest perfection documentation in form and substance satisfactory to Visplay, as may be necessary, or in Visplay's opinion, desirable, to perfect Visplay's Security Interest and lien in the Collateral, in order to establish, perfect, preserve and protect Visplay's Security Interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Visplay's Security Interest.

12. Replacement, Return of Goods; Changes to Order; Packaging

- 12.1 Without prejudice to Article 7 hereof, Customer shall not be entitled to

claim that the Goods are to be replaced or taken back against issuing a credit note.

- 12.2 If the Goods are standard commercial Goods, Visplay (in its sole and absolute discretion) may replace the Goods or take them back against issuing a credit for the returned Goods.
- 12.3 Custom-made Goods will not be replaced or taken back against issuing a credit note. Custom-made Goods are technical modifications of existing types of standard goods and technical developments according to customer requests.
- 12.4 Credit will only be issued for Goods which are both approved for return in writing by Visplay and are returned strictly in accordance with Visplay's instructions. Customer shall be responsible for all such costs and expenses and risks. Packaging costs of the returned items shall be borne by Customer.
- 12.5 Requests for changes or cancellations to an order are subject to Visplay's agreement to make those changes.
- 12.6 Visplay will package and prepare the goods for shipment in accordance with its normal procedures. If Customer requests or requires any additional packaging or preparation other than in conformity with Visplay's normal procedure and Visplay approves such request, then Customer will pay the costs of such additional packaging or preparation, which will be added to and paid in accordance with the purchase price for the Goods.
- 15.1 Ausschließlicher Gerichtsstand für alle Rechtsstreitigkeiten aus oder im Zusammenhang mit dem Vertragsverhältnis der Vertragsparteien ist der Sitz von Visplay.
- 15.2 Für diese Lieferbedingungen sowie das Vertragsverhältnis der Vertragsparteien gilt das Recht der Bundesrepublik Deutschland.

13. Venue, Applicable Law

- 13.1 The parties hereto irrevocably and unconditionally consent to the exclusive jurisdiction of the courts of the State of Pennsylvania for all disputes arising out of or in connection with these Terms of Delivery and the contractual relationship between Visplay and Customer with respect to the delivery of Goods or the provision of Services.
- 13.2 Any dispute, controversy or claim arising out of or relating in any way to the agreement between the parties or the Goods sold pursuant thereto, including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of the agreement between the parties, shall be submitted to and resolved by binding arbitration by the American Arbitration Association in accordance with its commercial arbitration rules upon a party's submission of the dispute to arbitration. If the American Arbitration Association does not exist or, in Visplay's sole discretion, fails to abide by the terms of this Article, then Visplay shall designate another organization to conduct such arbitration. In the event that Visplay so designates another organization to conduct arbitrations, then any and all references in this Article to the American Arbitration Association shall be deemed to refer to the organization designated by Visplay to conduct all arbitrations hereunder. Any judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after two years from when the aggrieved party knew or should have known of the controversy, claim, dispute or breach. This agreement to arbitrate shall be specifically enforceable. The arbitration shall be conducted by three arbitrators. If the parties are not able to agree upon the selection of an arbitrator, within twenty days of commencement of an arbitration proceeding by service of a demand for arbitration, the arbitrator shall be selected by the American Arbitration Association shall select the arbitrator in accordance with the terms of this Article. Each party shall select an arbitrator within ten days of commencement of the arbitration who shall serve as a neutral arbitrator and the two designated arbitrators shall select a third neutral arbitrator within twenty days of their selection. If either (i) a party fails to timely select an arbitrator or (ii) the two arbitrators selected by the parties cannot agree on selection of a third arbitrator within twenty days of their appointment, the American Arbitration Association shall select such arbitrator(s) in accordance with the terms of the agreement. The arbitrators shall have ten years of experience in the sale of goods pursuant to commercial contracts, shall be knowledgeable about the laws of the State of Pennsylvania regarding the sales of goods, and also shall have served as an arbitrator at least three times prior to their service as an arbitrator in this arbitration. The arbitration shall be conducted in accordance with the then existing commercial rules of the American Arbitration Association, except as expressly set forth in this Article. The arbitration shall be conducted in an office designated by Visplay in or within fifty (50) miles of Allentown, Pennsylvania. If Visplay fails to designate such location for the arbitration on or before five days before the commencement of the arbitration, then the arbitration shall be held at Visplay's offices in Allentown, Pennsylvania. The laws of the State of Pennsylvania shall be applied in any arbitration proceedings, without regard to either the principles of conflict of laws or the UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980. It is the intent of the parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within one hundred and twenty days from the date the arbitrators are appointed. The arbitrators may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award. Except as may

be required by law, neither party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. The existence and content of the arbitral proceedings and any rulings or award shall be kept confidential except (i) to the extent that disclosure may be required of a party to fulfill a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, or (ii) with the written consent of all parties. Notwithstanding anything to the contrary, either party may disclose matters relating to the arbitration or the arbitral proceedings where necessary for the preparation or presentation of a claim or defense in such arbitration. The parties shall not be entitled to discovery in the arbitration. The parties shall exchange a copy of all exhibits for the arbitration hearing and shall identify each witness who will testify at the arbitration, with a summary of the anticipated testimony of such witness ten days before the arbitration hearing. The arbitrators shall have no authority to award punitive, consequential, special or indirect damages. Such prohibited damages include lost profits; any form of overhead not directly incurred at the project site, such as rent; wage or salary increases; ripple or delay damages; loss of productivity; increased cost of funds for the project; extended capital costs; lost opportunities; inflation costs of labor, material, or equipment; unavailability of labor, material or equipment due to delays; increased costs of bonding due to delay; or any other indirect losses arising from the conduct of the parties to the agreement. The arbitrators shall not be entitled to issue injunctive or any other equitable relief. The arbitrators shall award interest from the time of the breach to the time of award at the rate of the lesser of 18% or the maximum rate of interest permitted by law. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), shall be borne by the unsuccessful party, as determined by the arbitrators, and shall be awarded as part of the arbitrator's award. It is specifically understood and agreed that any party may enforce any award rendered pursuant to the arbitration provisions of this Article by bringing suit in any court of competent jurisdiction. The decision shall be final and conclusive on the parties. No party to the agreement is permitted to make any application pursuant to 28 U.S.C. § 1782.

- 13.3 Customer hereby irrevocably waives, to the fullest extent permitted by law, and agrees not to assert, by way of motion, as a defense or otherwise, (i) any objection which Customer may now or hereafter have to the laying of venue or any suit, action or proceeding relating, directly or indirectly, to the agreement in the State of Pennsylvania, (ii) any claim that the State of Pennsylvania is not a convenient forum for any such suit, action or proceeding, and (iii) any claim that Customer is not personally subject to the jurisdiction of the above named arbitration forum. This Article 13 shall survive the termination or cancellation of the agreement between the parties.

14. Miscellaneous

- 14.1 If one or several provisions of the contract and/or these Terms of Delivery shall be or become invalid or unenforceable, the validity of the remaining provisions of the contract and/or the Terms of Delivery shall not be affected hereby. In such case, the contracting parties undertake to replace the invalid or unenforceable provision by such valid and enforceable provision that comes closest to the intended economic purpose. The same shall apply if the contract is incomplete.
- 14.2 The contracting parties mutually undertake to take all reasonable measures necessary for achieving the purpose of the contract and to refrain from any act that may affect the fulfillment and performance of the contract.
- 14.3 In the event of a violation or threatened violation of Visplay's proprietary rights, Visplay shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms of Delivery, to temporary or permanent injunctive relief enjoining such act or threatened act in any court of competent jurisdiction without any requirement to post a bond or provide other security. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Visplay would suffer irreparable harm.
- 14.4 The waiver by Visplay of any breach or violation of these Terms of Delivery by Customer shall not be construed as a waiver of any other existing or future breach or breaches by Customer. No failure of Visplay to insist upon strict compliance by Customer with these Terms of Delivery, the agreement of the parties or to exercise any right accruing from any default of Customer shall impair Visplay's rights in case Customer's default continues or in case of any subsequent default by Customer.
- 14.5 The parties hereto are independent contractors and nothing in these Terms of Delivery will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.
- 14.6 These Terms of Delivery shall apply to all sales of Goods to Customer and shall survive the termination or cancellation of any other agreements, including but not limited to development or supply agreements, between Visplay and Customer.
- 14.7 Customer has not right to assign its rights or obligations under these Terms of Delivery or any agreement between the parties.
- 14.8 These Terms of Delivery together with any order confirmation with respect to the Goods or Services covered thereby or other writing executed by Visplay following such order confirmation shall constitute the entire ag-

reement between Visplay and Customer with respect to the delivery of such Goods or Services and supersede any and all prior written or oral agreements, understandings or commitments with respect thereto.

- 14.9 All rights in pattern, design, trade names, catalogues, price lists, materials, samples, trademarks and copyrights of Visplay and its manufacturers used on or in connection with the Goods are proprietary and shall remain the exclusive property of Visplay and its manufacturers, and the Customer shall have no right of interest therein or with respect thereto. The Customer shall not reproduce or simulate, or cause or allow anyone to reproduce or simulate, either directly or indirectly any such pattern, design, trade name, trademark or copyright.
- 14.10 Any notice, statement, demand or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to these Terms of Delivery shall be in writing and shall be deemed to have been properly given, rendered or made, if sent by registered or certified mail, return receipt requested, addressed to the other party at 7528 Walker Way, Allentown, PA 18106 for Visplay and at the address set forth on the order from the Customer, or sent via nationally recognized overnight courier providing for receipted delivery, and shall be deemed to have been given, rendered or made (a) if so mailed, three (3) days after the day so mailed and (b) if sent via nationally recognized overnight courier, on the date of receipt or rejection. Either party may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands or other communications intended for it. Writings required or permitted pursuant to these Terms of Delivery include email and facsimile transmissions.