

Visiscope Equipment Purchase Agreement

Visiscope Limited (Company Number 926940)
(Vendor)

The Purchaser named in Schedule 1
(Purchaser)

Parties

1. **Visiscope Limited (Company Number 926940)** a company having its registered office at 560 Whitford Road RD 1, Howick 2574 Auckland ("Vendor")
2. **The Purchaser named in Schedule 1** ("Purchaser")

Background

- A. The Vendor is the seller of the Equipment.
- B. The Purchaser wishes to buy the Equipment on the terms and conditions contained in this Agreement.

The parties agree as follows:

1. Interpretation

- 1.1 In this Agreement unless the context indicates otherwise:
 - "**Agreement**" means this agreement and its schedules including any variations, additions or amendments, as may be agreed in writing by the Parties from time to time;
 - "**Business Day**" means any day other than a Saturday, Sunday or a statutory public holiday in Wellington, New Zealand;
 - "**Delivery Date**" means the date (or dates) and time (or times) that the Equipment will be delivered at the Purchaser's premises in accordance with Schedule 1;
 - "**Effective Date**" means the date of execution of this Agreement or, in the event that this Agreement is signed by the Parties on different dates, then the date on which the last Party to sign the Agreement signs it;
 - "**Equipment**" means all or any part of the equipment referred to in Schedule 1;
 - "**Equipment Warranty**" means the Manufacturer's warranties relating to the Equipment as set out in Schedule 1;
 - "**Maintenance Materials**" means the documentation required to operate the Equipment and includes operational instructions, user manuals and any other documents of a similar nature;

"**Manufacturer**" means the original manufacturer of the Equipment;

"**Parties**" means the Vendor and the Purchaser and includes their successors and permitted assigns, and "**Party**" means any one of them;

"**Purchase Price**" means the total amount payable by the Purchaser to the Vendor for the Equipment as specified in Schedule 1.

1.2 **Schedules:** the Schedules to this Agreement form part of this Agreement.

1.3 **Sections, clauses and schedules:** references to sections, clauses and Schedules are references to this Agreement's sections, clauses and Schedules.

1.4 **Statutes and regulations:** references to any statutory provision will include any statutory provision which amends or replaces it and any subordinate legislation made under it.

2. Sale and Supply

2.1 The Vendor agrees to sell, and the Purchaser agrees to buy, the Equipment on the terms and conditions of this Agreement.

2.2 The Purchaser acknowledges that the Vendor is reselling the Equipment and is authorised to pass on to the Purchaser the Equipment Warranty. However, the Vendor is not responsible for remedying any faults or defects that may arise in relation to the Equipment, and any such repairs will be at the discretion of the Manufacturer, in accordance with and subject to the terms and conditions of the Equipment Warranty.

2.3 The Vendor makes no representation, statement, warranty or undertaking to the Purchaser in relation to the quality and/or description of the Equipment, other than those that are contained in the Equipment Warranty.

2.4 The parties agree that, given the subject matter of this agreement, and the identity of the parties, the provisions of the Consumer Guarantees Act 1993 do not apply to the sale and purchase of the

Equipment, and the parties agree it is fair and reasonable for the parties to contract out of such provisions.

3. Delivery and Installation

3.1 The Vendor will arrange for the Equipment to be delivered at the location specified by the Purchaser on the Delivery Date in accordance with Schedule 1.

3.2 The Purchaser will provide access to its premises on the Delivery Date.

3.3 If the Vendor considers that it is or is likely to be prevented or delayed from achieving a time or date for delivery on the Delivery Date as specified in Schedule 1, it will immediately give the Purchaser written notice of such delay and the Parties will work together in good faith to resolve the delivery issue in a manner that is mutually satisfactory to both Parties.

4. Title and Risk

4.1 Title to the Equipment on delivery of the Equipment to the Purchaser provided that full payment of the Purchase Price has been made.

4.2 Risk in the Equipment will pass to the Purchaser following the Equipment leaving the possession of the Vendor. The Purchaser

4.3 the Equipment at any time prior to must ensure the Equipment from that point in time.

4.4 Until title to the Equipment passes to the Purchaser, the Purchaser will:

- (a) hold the Equipment as bailee;
- (b) clearly designate the Equipment as the Vendor's property;
- (c) store the Equipment in such a way that they are identified as the Vendor's property;
- (d) maintain the Equipment in good order and condition; and
- (e) preserve the Equipment in their present form.

4.5 Without prejudice to Vendor's other rights and remedies, the Vendor will be entitled to retake possession of payment in full of the Purchase Price being received for the Equipment. The Purchaser grants the

- Vendor an irrevocable right and authority to enter onto any place, with a representative of the Purchaser, where such Equipment is situated, or thought to be situated at any time, and to take and resell the Equipment and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing to the Vendor by the Purchaser.
- 4.6 The Purchaser acknowledges that, pursuant to the provisions of the Personal Property Securities Act 1990, the retention of title in this clause 4 gives rise to a security interest in the Equipment to secure the Purchaser's performance of its obligations to the Vendor.
- 4.7 The Purchaser undertakes to:
- (a) promptly do all things, execute all documents and/or provide any information which the Vendor may reasonably require to enable the Vendor to perfect and maintain the perfection of its security interest;
 - (b) give the Vendor not less than ten (10) Business Days prior written notice of any proposed change in its name and/or any other change to its details; and
 - (c) immediately on request by the Vendor (and at the Purchaser's expense) obtain from any third party such agreements and waivers of any security interest that a third party has in the Equipment, to ensure that at all times the Vendor has a first priority security interest in the Equipment.
- 5. Payment**
- 5.1 The Purchaser agrees to pay the Vendor the total Purchase Price in full upon receipt of the Vendor's tax invoice. The Vendor shall be under no obligation to deliver or arrange delivery of the Equipment until it has received payment in full.
- 5.2 Any taxes, Government levies, insurance, clearance, forwarding and other expenses arising from the delivery to or removal from the Purchaser's premises, payable pursuant to this Agreement, are to be paid by the Purchaser immediately upon receipt of notice from the Vendor.
- 5.3 Unless otherwise specified, all prices will be quoted and billed exclusive of duties and taxes, including GST (as defined in the Goods and Services Tax Act 1985).
- 6. Returns and Maintenance**
- 6.1 The Vendor will only accept returns of the Equipment in exceptional and justified (in the Vendor's sole discretion) cases. Any refund made will depend upon the age, condition, and saleability of the Equipment.
- 6.2 It shall be the Purchaser's responsibility to check the Equipment upon receipt and confirm whether the Equipment is undamaged and complete. If the Purchaser believes the Equipment to be faulty in any respect the Purchaser shall follow the Manufacturer's instructions (as set out in the Equipment Warranty) for return of the Equipment. The Vendor has no liability for repair or replacement of the Equipment but may, at its discretion, arrange replacement of the Equipment, should the Manufacturer confirm responsibility for any defects.
- 6.3 The Vendor agrees to supply to the Purchaser the Maintenance Materials on the Delivery Date.
- 6.4 The Purchaser will at all times follow the instructions and advice in the Maintenance Materials on matters dealing with the maintenance and operations of the Equipment.
- 7. Termination**
- 7.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect, unless terminated earlier in accordance with its terms, until the date upon which the Purchaser complies with clause 5.1 (if applicable).
- 7.2 Either Party may, without prejudice to its other rights or remedies, terminate this Agreement with immediate effect by written notice to the other Party if the other Party
- 7.3 commits a material breach of the Agreement (being a single event or a series of events which together amount to a material breach (as the case may be)) which:
- (a) is capable of being cured and following notice from the other Party requiring the Party to cure the breach, that Party does not cure the breach
 - (b) within twenty (20) Business Days of the receipt of written notice of the breach; or
 - (c) is not capable of being cured (other than by the payment of money).
- 7.4 The Vendor may cancel the Agreement and require the Purchaser to cease performance of the whole or any part of the Agreement by giving twenty (20) Business Days written notice to the Purchaser at any time. In the event of such cancellation, the Vendor shall not be obliged to supply any Equipment to the Purchaser as contemplated in this Agreement.
- 7.5 This clause 7 is without prejudice to any other right, power or remedy under this Agreement, at law, or otherwise, that either Party has in respect of a default by the other Party.
- 7.6 The termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.
- 8. Liability**
- 8.1 In no event shall the Vendor be liable for any general, consequential, incidental, indirect, special, loss of profit or opportunity, exemplary or punitive, special or other damages whatsoever resulting from the Vendor's performance or failure to perform under this Agreement, or the furnishing, performance or use of any products sold pursuant hereto, whether due to breach of contract, breach of warranty, strict liability, product liability, the negligence of the Vendor or otherwise.
- 8.2 Except where expressly provided in this Agreement:
- (a) the Vendor's liability shall not exceed the Purchase Price paid by

the Purchaser for the Equipment which are the subject of, or the cause of (whether directly or indirectly) any claim by the Purchaser against the Vendor;

(b) damage limitations provided in this Agreement and the remedies stated herein shall be the Purchaser's sole and exclusive remedy;

(c) the Vendor shall not, by reason of the termination of this Agreement, be liable to the Purchaser for any damages or injunctive relief of any kind, including but not limited to, compensation, reimbursement or damages because of any:

(i) loss of prospective profits;

(ii) expenditures, investments, losses or commitments in connection with the establishment, development or maintenance of the business or goodwill; or

(iii) any other cause by reason of the termination of such relationship; and

(d) this limitation on liability shall survive failure of any essential purpose.

8.3 These terms and conditions do not, and no provision of these terms and conditions purports to, restrict or modify or have the effect of excluding, restricting or modifying the application of any conditions and warranties imposed and required to be binding by statute.

8.4 This clause 8 does not exclude, restrict or modify any condition, warranty, right or liability implied in this Agreement by a statute or by law if to do so would make this clause void. For the avoidance of doubt, nothing in this clause 8 shall limit or exclude the Vendor's liability in respect of any conditions and warranties imposed and required to be binding by statute.

9. Indemnity

9.1 The Purchaser indemnifies the Vendor against any loss, cost, damage or expense, excluding consequential loss, suffered or incurred by the Vendor resulting, directly, from any default or

breach by the Purchaser under or in connection with this Agreement.

10. Warranties

10.1 Subject to any express warranties contained in this Agreement, to the extent permitted by law, all warranties, guarantees and representations made to the Purchaser, expressly or impliedly, by statute or otherwise, are hereby excluded and disclaimed and the Purchaser acknowledges that it does not rely upon any of those warranties, guarantees and representations.

11. General

11.1 **Amendments:** no amendment of this Agreement shall be effective unless it is in writing and duly executed by each Party to it or on behalf of each Party by an authorised representative.

11.2 **Counterparts:** this Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of the

11.3 counterparts shall together constitute the one agreement.

11.4 **Entire Agreement:** this Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

11.5 **Further Assurances:** each Party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this Agreement.

11.6 **Severability:** if any provision of this Agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and shall not affect the enforceability, legality, validity or application of any other provision of this Agreement.

11.7 **No Waiver:** no failure or forbearance by a Party to exercise, or delay in exercising, (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

11.8 **Set Off:** the Vendor may deduct from or set off against any amount that is or may become payable by it in relation to this Agreement to the Purchaser, any amount that is or may become payable to it by the Purchaser in relation to this Agreement or otherwise.

11.9 **Governing Law:** this Agreement is governed by the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of or in connection with this Agreement.

Schedule 1

Purchaser's Name, Address and Contact Details

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Equipment Specification

[Insert Equipment Specification]

Purchase Price

[Insert Details of Purchase Price]

Payment is strictly 100% in full upon receipt of the Vendor's invoice.

The Purchase Price excludes GST and freight and is subject to international exchange rate fluctuations.

Equipment Warranty

[Insert Manufacturer's Equipment Warranty]

The Equipment is covered by a Manufacturer's 12 month warranty against defects. The Manufacturer has a non-refund policy and will not issue refunds.

Delivery and Installation

[Insert Details of Specific Date(s) for Delivery and Installation]

Delivery will take place approximately 10 days following receipt of payment in full for the Equipment.