



Terms and Conditions - Hire, Productions and Installations

1.0 Definitions

- 1.1 "Seller" shall mean TAVD Pty Ltd and The AV Dept and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all services supplied by the Seller to the Client and includes any advice or recommendations.
- 1.5 "Price" shall mean the cost of the Services as agreed between the Seller and the Client subject to clause 4 of this contract.

2.0 Acceptance

- 2.1 Any instructions received by the Seller from the Client for the supply of Services and client's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 The Client undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, fax number, or practices).

3.0 Services

- 3.1 The Services are as described on the invoices, quotation, work authorisation or any other work start forms as provided by the Seller to the Client.

4.0 Price And Payment

- 4.1 At the Seller's sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Client in respect of Services supplied; current Price list; or
 - (b) The Price shall be the Seller's current Price, at the date of delivery of the Services, according to the Seller's
 - (c) The Price of the Services shall (subject to clause 4.2) be the Seller's quoted Price which shall be binding upon the Seller provided that the Client shall accept in writing the Seller's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for

on the basis of the Seller's quotation and will be shown as variations on the invoice.

Payment for all variations must be made in full at their time of completion.

- 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Services.
- 4.4 The Seller may withhold delivery of the Services until the Client has paid for them, payment should be made before the delivery date.
- 4.5 At the Seller's sole discretion, for certain approved Clients payment will be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5.0 Delivery Of Services / Services

- 5.1 Delivery of the Services shall be made to the Client's nominated address. The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery.
- 5.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.3 The Seller may deliver the Services by separate installments (in accordance with the agreed delivery this agreement.)
- 5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Services (or any of them) promptly or at all.

6.0 Risk

- 6.1 If the Seller retains property in the Services nonetheless, all risk for the Services passes to the Client on delivery

7.0 Lien & Stoppage in Transit

- 7.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have: (a) a lien on the Services; (b) the right to retain them for the price while the Seller is in possession of them; (c) a right of stopping the Services in transit whether or not delivery has been made or ownership has passed and (d) a right of resale, (e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgment for the price having been obtained

8.0 Client's Disclaimer

- 8.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Client acknowledges that he buys the Services relying solely upon his own skill and judgement.

9.0 The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10.0 Intellectual Property

10.1 Where the Seller has designed or drawn Services for the Client, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion. Conversely, in such a situation, where the Client has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Services (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller). Where any designs or specifications have been supplied by the Client for manufacture, by or to the order of the Seller then the Client warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Services shall not infringe the rights of any third party.

11.0 Default & Consequences Of Default

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgment. If the Client defaults in payment of any invoice, the Client shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.

11.2 Without prejudice to any other remedies the Seller may have,

if at any time the Client is in breach of any obligation (including those relating to payment),

11.3 The Seller may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller exercised its rights under this clause.

11.4 If any account remains unpaid at the end of the second month after supply of the Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

11.5 In the event that: (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client: then without prejudice to the Seller's other remedies at law
(i) the Seller shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

12.0 Title

12.1 It is the intention of the seller and agreed by the Client that property in the Services shall not pass until the Client has paid all amounts owing for the particular Services.

12.2 It is further agreed that:

- (a) Until such time as ownership of the Services shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Services or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease.
- (b) If the Client fails to return the Services to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services, without being responsible for any damage thereby caused.
- (c) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized and until then the Seller's ownership of rights in respect of the Services shall continue.
- (d) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (e) The Seller can issue proceedings to recover the Price of the Services sold notwithstanding that ownership of the Services may not have passed to the Client.

13.0 Cancellation

- 13.1** The Seller may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice.
- The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- At the Seller's sole discretion the Client may cancel delivery of the Services. In the event that the Client cancels delivery of the Services the Client shall be liable for any costs incurred by the Seller up to the time of cancellation.

14.0 Security And Charge

- 14.1** Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever: Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions.
- The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable here under have been met.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause 13.1 (a) and (b)] inclusive hereof the Client

15.0 Privacy Act 1988

- 15.1** The Client and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Seller.
- 15.2** The Client and/or the Guarantor/s agree that the Seller may exchange information about Client and Guarantor/s with those credit providers named in the

Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Client; (b) To notify other credit providers of a default by the Client; (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
- (d) To assess the credit worthiness of Client and/or Guarantor/s.

- 15.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time: (a) provision of Services; (b) marketing of Services by the Seller, its agents or distributors in relation to the Services;
- (c) analyzing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 15.5 The Seller may give, information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

16.0 General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or enforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 All Services supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Services supplied.
- 16.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms & conditions
- 16.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.
- 16.6 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Client of such change.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

