

## **Audio Technology NT Pty Ltd & Audiovisual Projects**

### **Standard Terms and Condition of Trade**

#### **Definitions:**

1.1 “AT” means Audio Technology NT Pty Ltd trading as Audio Technology and Audiovisual Projects, its successors and assigns or any person acting on behalf of and with the authority of Audio Technology NT Pty Ltd.

1.2 “Customer” means the person/s buying the Goods (and/or hiring Equipment, and/or having equipment serviced and or having equipment installed) as specified in any invoice, document or order, Build of Materials and if there is more than one Customer is a reference to each Customer jointly and severally.

1.3 “Goods” means all Goods or Services supplied by AT to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).

1.4 “Equipment” means all Equipment including any accessories supplied on hire by AT to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by AT to the Customer.

1.5 “Price” means the Price payable for the Goods/Equipment hire as agreed between AT and the Customer in accordance with clause 4 below.

#### **Acceptance:**

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment, or requests and accepts the installation of equipment.

2.2 These terms and conditions may only be amended with AT’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and AT.

### **Change in Control:**

3.1 The Customer shall give AT not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by AT as a result of the Customer's failure to comply with this clause.

### **Payment and Price:**

4.1 At Audio Technology's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by AT to the Customer; or
- (b) AT's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of not more than thirty (30) days.

4.2 AT reserves the right to change the Price if a variation to AT's quotation is requested. Any variation from the specifications (including, but not limited to, any variation as a result of delays in shipping from AT's suppliers or as a result of increases to AT in the cost of materials and labour) will be charged for on the basis of AT'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 At Audio Technology's sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by AT, which may be:

- (a) on delivery of the Goods/Equipment;
- (b) before delivery of the Goods/Equipment;
- (c) by way of instalments/progress payments in accordance with AT's payment schedule;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by AT.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to 1.99% of the Price for any in-store sales orders using either

Visa or MasterCard, or by any other method as agreed to between the Customer and AT.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to AT an amount equal to any GST AT must pay for any supply by AT under this or any other agreement for the sale of the Goods/hire/installation of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4.7 While we try and ensure that all prices quoted on our website or in other documents are accurate, errors may occur. If we discover an error in the price of goods you have ordered we will inform you as soon as possible and give you the option of reconfirming your order at the correct price or cancelling it. If we are unable to contact you we will treat the order as cancelled. If you cancel and you have already paid for the goods, you will receive a full refund.

### **Delivery of Goods/Equipment:**

5.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:

(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at AT's address; or

(b) AT (or AT's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.

5.2 At AT's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then AT shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

5.4 AT may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by AT to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and AT will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

### **Freight & Handling:**

6.1 Unless specified by the Customer, deliveries will be made by a carrier nominated by AT, provided however that AT shall not be liable for any delay, negligence or other act or omission of the carrier.

6.2 AT shall have the right to invoice for any additional freight charges incurred for express freight at the request of the Customer and/or the delivery address different from the one supplied at time of sale in accordance with clause 4.2.

6.3 When AT receives goods from the Customer for repair/return or any other reason, AT will return any such equipment using packaging materials supplied by the customer and accepts no responsibility for the suitability of these materials. Any additional packaging supplied by AT will be charged to the customer.

### **Access:**

7.1 The Customer shall ensure that AT has clear and free access to the work site at all times to enable them to undertake the works. AT shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of AT.

### **Underground Locations:**

8.1 Prior to AT commencing any work the Customer must advise AT of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst AT will take all care to avoid damage to any underground services the Customer agrees to indemnify AT in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

**Risk:**

9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, AT is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AT is sufficient evidence of AT's rights to receive the insurance proceeds without the need for any person dealing with AT to make further enquiries.

9.3 If the Customer requests AT to leave Goods outside AT's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

9.4 Where AT is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and AT shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

9.5 During the process of repairs, installation or maintenance performed by AT, all or part of the customer's stored data may be lost. It is the customer's responsibility to ensure all data is saved elsewhere prior to works being carried out.

**Title to Goods:**

10.1 AT and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid AT all amounts owing to AT; and
- (b) the Customer has met all of its other obligations to AT.

10.2 Receipt by AT 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 recognised.

10.3 It is further agreed that:

(a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and must return the Goods to AT on request.

(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for AT and must pay to AT the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for AT and must pay or deliver the proceeds to AT on demand.

(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of AT and must sell, dispose of or return the resulting product to AT as it so directs.

(e) the Customer irrevocably authorises AT to enter any premises where AT believes the Goods are kept and recover possession of the Goods.

(f) AT may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AT.

(h) AT may commence proceedings to recover the Price of the supplied / installed Goods sold and installations costs, notwithstanding that ownership of the Goods has not passed to the Customer.

## **Personal Property securities Act 2009 (“PPSA”)**

11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by AT to the Customer.

11.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AT may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);

(b) indemnify, and upon demand reimburse, AT for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of AT;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of AT;

(e) immediately advise AT of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

11.4 AT and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

11.7 Unless otherwise agreed to in writing by AT, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

11.8 The Customer must unconditionally ratify any actions taken by AT under clauses 11.3 to 11.5.

11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### **Security and Charge:**

12.1 In consideration of AT agreeing to supply or install the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

12.2 The Customer indemnifies AT from and against all AT's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AT's rights under this clause.

12.3 The Customer irrevocably appoints AT and each director of AT as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

### **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

13.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify AT in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description, quote, sample or demonstration model. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow AT to inspect the Goods/Equipment.

13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

13.3 AT acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AT makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. AT's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Customer is a consumer within the meaning of the CCA, AT's liability is limited to the extent permitted by section 64A of Schedule 2.

13.6 If AT is required to replace the Goods under this clause or the CCA, but is unable to do so, AT may refund any money the Customer has paid for the Goods.

13.7 If the Customer is not a consumer within the meaning of the CCA, AT's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Customer by AT at AT's sole discretion;

(b) limited to any warranty to which AT is entitled, if AT did not manufacture the Goods;

(c) otherwise negated absolutely.

13.8 Subject to this clause 13, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 13.1; and

(b) AT has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, AT shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods/Equipment;
- (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by AT;
- (e) fair wear and tear, any accident, or act of Nature / God.

13.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by AT as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that AT has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 13.10.

13.11 AT may in its absolute discretion accept non-defective Goods for return in which case AT may require the Customer to pay handling fees of up to twenty five percent (25%) of the value of the returned Goods plus any freight costs.

13.12 Notwithstanding anything contained in this clause if AT is required by a law to accept a return then AT will only accept a return on the conditions imposed by that law.

#### **Default and Consequences of Default:**

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Customer owes AT any money the Customer shall indemnify AT from and against all costs and disbursements incurred by AT in recovering the debt (including but not limited to

internal administration fees, legal costs on a solicitor and own client basis, AT's collection agency costs, and bank dishonour fees).

14.3 Without prejudice to any other remedies AT may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions AT may suspend or terminate the supply of Goods/Equipment to the Customer. AT will not be liable to the Customer for any loss or damage the Customer suffers because AT has exercised its rights under this clause.

14.4 Without prejudice to AT's other remedies at law AT shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to AT shall, whether or not due for payment, become immediately payable if:

(a) any money payable to AT becomes overdue, or in AT's opinion the Customer will be unable to make a payment when it falls due;

(b) the Customer 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 its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### **Cancellation:**

15.1 AT may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice AT shall repay to the Customer any money paid by the Customer for the Goods/Equipment. AT shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 In the event that the Customer cancels delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by AT as a direct result of the cancellation (including, but not limited to, any loss of profits).

## **Privacy Act 1988:**

16.1 The Customer agrees for AT to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by AT.

16.2 The Customer agrees that AT may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

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

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

16.3 The Customer consents to AT being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

16.4 The Customer agrees that personal credit information provided may be used and retained by AT for the following purposes (and for other purposes as shall be agreed between the Customer and AT or required by law from time to time):

- (a) the provision of Goods/Equipment; and/or
- (b) the marketing of Goods/Equipment by AT, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods/Equipment.

16.5 AT may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that AT is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of AT, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by AT has been paid or otherwise discharged.

### **Unpaid Sellers Rights:**

17.1 Where the Customer has left any item with AT for repair, modification, exchange or for AT to perform any other service in relation to the item and AT has not received or been tendered the whole of any moneys owing to it by the Customer, AT shall have, until all moneys owing to AT are paid and/or if not collected within 90 days:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

17.2 The lien of AT shall continue despite the commencement of proceedings, or judgment for any moneys owing to AT having been obtained against the Customer. The Customer releases AT from any liability arising out of or connected with such disposal whether by negligence or otherwise.

### **Equipment Hire:**

18.1 Equipment shall at all times remain the property of AT and is returnable on demand by AT. In the event that Equipment is not returned to AT in the condition in which it was delivered AT retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all AT shall have right to charge the Customer the full cost of replacing the Equipment.

18.2 The Customer shall;

(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.

(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by AT to the Customer.

18.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, AT's interest in the Equipment and agrees to indemnify

AT against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### **Building and Construction Industry Payments Act 2004:**

19.1 At AT's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services and/or Equipment then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, and Northern Territory in except to the extent permitted by the Act where applicable

### **General:**

20.1 The failure by AT to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AT's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which AT has its principal place of business, and are subject to the jurisdiction of the courts in that state.

20.3 Subject to clause 13 AT shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by AT of these terms and conditions (alternatively AT's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

20.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AT nor to withhold payment of any invoice because part of that invoice is in dispute.

20.5 AT may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.6 The Customer agrees that AT may amend these terms and conditions at any time. If AT makes a change to these terms and conditions, then that change will take effect from the date on which AT notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for AT to provide / install Goods/Equipment to the Customer.

20.7 Neither party shall be liable for any default due to any act of Nature /God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.