

TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

THE GOODS AND/OR SERVICES REFERRED TO IN THIS ORDER WILL ONLY BE PURCHASED IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS, UNLESS OTHERWISE AGREED IN WRITING.

1. Terms and Definitions

- 1.1 Unless otherwise required by the context of this Purchase Order, the following definitions shall apply:
- 'Goods'** means the goods referred to in the Order and includes but is not limited to all Goods, chattels, plan, equipment, machinery, consumables, software programs etc.
- 'Order'** means this purchase order incorporating these terms and conditions, the acceptance of which constitutes a contract made in the State of Western Australia between the Supplier and the Purchaser.
- 'Purchaser'** means the company Audio Visual Imagenation named on the Order.
- 'Purchase Order Number'** is the reference number allocated to this Order.
- 'Supplier'** means the person, firm, corporation, or statutory authority named on the face of the Order who is invited to supply the Goods and/or Services of this Order to the Purchaser.
- 'Services'** means the installation, repairs and maintenance, or replacement, to the plant and equipment, (including but not exclusively electrical Services, plumbing, fire protection equipment, training, software programming), referred to in the Order and performed within any Audio Visual Imagenation premises.

2. Entire Agreement

- 2.1 This Order when accepted by the Supplier contains the entire agreement between the Purchaser and the Supplier and any variation of this Order shall be ineffective unless in writing and signed by an authorised representative of the Purchaser.

3. Assignment

- 3.1 The Supplier shall not, without the prior written consent of the Purchaser, assign whether in whole or part the benefit of the Order or any rights or obligations thereof.

4. Price

- 4.1 The purchase price(s) stated in the Order shall remain fixed unless otherwise agreed to in writing by an authorised representative of the Purchaser.

5. Invoice and Payment

- 5.1 The Purchaser will pay for the Goods and/or Services within 30 days from the later of the date of receipt by the Purchaser of the invoice relating thereto and the date of delivery of the Goods and/or Services in accordance with this Order; unless alternative payment terms are expressly agreed by the Purchaser and particularised in this Order.
- 5.2 Each invoice shall be taxable form as required by "A New Taxation System (Goods and/or Services Tax) Act 1999" and shall state the Purchase Order Number and any associated delivery docket or packing slip references.

6. Delivery

- 6.1 The delivery date specified in this Order is the date of delivery of the Goods or provision of the Services to the nominated point of delivery. Any delivery of the Goods made or Services performed after the delivery date shall constitute a breach of the terms of this Order by the Supplier and, without prejudice to its rights herein, the Purchaser shall be entitled to return the Goods or terminate the provision of the Services at the Supplier's expense.

7. Standards of Acceptance

- 7.1 This Order represents an offer from the Purchaser to be accepted by the Supplier. Acceptance by the Supplier shall be communicated in writing to the Purchaser or by the supply of the Goods and/or Services in accordance with the terms of the Order.
- 7.2 No Goods and/or Services shall be deemed accepted by the Purchaser until the Goods and/or Services have been received and inspected by the Purchaser and found to conform with the Order and the standards referred to in clause 7.4. The Purchaser shall be entitled to return to the Supplier at the Supplier's cost, any goods not accepted by it, and the Supplier shall, at its own expense and at the Purchaser's option, repair or replace the Goods and/or Services or issue a credit in respect thereof to the Purchaser.
- 7.3 Acceptance of this Order shall not:
- bind the Purchaser to accept future Goods or performance of Services, nor deprive it of the right to return articles already accepted, and
 - be deemed to be a waiver of the Purchaser's right to cancel or return all or any of the Goods and/or Services the subject of this Order, or to make any claim for damages, including re-procurement costs or loss of profits, injury to reputation or other special consequential or incidental damages incurred by the Purchaser. Such rights, which are expressly reserved by the Purchaser, shall be in addition to any other remedies provided under this order or provided by law.
- 7.4 The Goods and/or Services shall be of merchantable quality and fit for the purpose intended by the Purchaser and shall in all respects conform with any drawings, specifications or description supplied by the Purchaser to the Supplier and current at the time of delivery.
- 7.5 The Purchaser shall be entitled at any time to inspect the Supplier's manufacturing works or store and any of the Purchaser's Goods in the Supplier's store.
- 7.6 The Supplier shall, at its own expense, comply with any instruction given to it by the Purchaser with respect to the manufacture and packaging of the goods.

8. Loss or Damage in Transit

- 8.1 The Purchaser shall advise the Supplier of any loss of, damage to or defect in the Goods within fourteen (14) days of the date of delivery.
- 8.2 The Supplier shall make good to the Purchaser for any loss, damage or defect in the goods as notified in accordance with the Clause in 8.1.

9. Freight

- 9.1 Unless otherwise agreed to by the Purchaser particularised on the purchase order, the Supplier shall bear the cost of delivery to the Purchaser's nominated point of delivery designated on the front of this Order.
- 9.2 If the nominated point of deliver is other than the Purchaser's head office at 9 Pitt Way Booragoon, Western Australia 6154, the Supplier shall, prior to the despatch of the Goods and/or Services, request the Purchaser's written delivery instructions and shall comply therewith.

10. Packing

- 10.1 All Goods supplied pursuant to the Order shall be packed so as to ensure safe delivery to the nominated point of delivery.

- 10.2 The Supplier shall ensure that all dunnage, case timber, and wooden pallets are treated for permanent protection from pests in accordance with any legal requirements in the country of origin of the Goods and those of the Australian Department of Health and Customs. In all cases, the original Certificate of Compliance shall be forwarded with the shipping documents.

- 10.3 The Supplier shall ensure that all dangerous or hazardous Goods are packed and labelled in accordance with any legal requirements applicable in Australia.

- 10.4 All packing slips and delivery dockets must state the Purchase Order Number relevant to the shipment.

11. Shipment and Title

- 11.1 Title in the Goods shall pass to the Purchaser upon delivery except in instances where a partial or whole payment is made prior to delivery. Title in the Goods (including all materials, equipment, fittings, and parts specifically purchased and or appropriated by the Supplier for or relating to the manufacture or production of the Goods and whether in the possession of the Supplier or elsewhere) in respect of which partial or whole payment is made prior to delivery, shall vest in the Purchaser at the date of such payment.

- 11.2 The Goods shall be at risk of the Supplier until they are accepted by the Purchaser in accordance with the terms of this Order. The Supplier is advised to insure the Goods against loss or damage until acceptance by the Purchaser is affected. If the Purchaser exercises its right of rejection after acceptance in relation to any of the Goods, the risk in these Goods shall be deemed not to have passed to the Purchaser.

12. Warranties

- 12.1 The Supplier represents and warrants that:

- the price charged for the Goods and/or Services shall be no higher than the Supplier's current price to any other customer for the same quantity of such Goods and/or Services and under like conditions,
- all Goods delivered pursuant to this Order will be new, unless otherwise specified and free from any and all defects in materials and workmanship, will conform to applicable specifications and standards of quality and performance and will be free from defects in design (when design is the responsibility of the Supplier) and suitable for their intended use or purpose,
- all Services performed pursuant hereto will be free from any and all defects in materials and workmanship and will be performed in accordance with the specifications and instructions of the Purchaser provided however that the Supplier shall retain direction and control with respect to the manner and means of performing such Services,
- all Services will be performed in compliance of all applicable laws and regulations including but not limited to the *Occupational Health & Safety Act 1985*.
- all Services will be performed by personnel with the authority, licenses, permits, and consents necessary to perform the Services

- 12.2 All representations and warranties of the Supplier including its services warranties and guarantees if any, whether expressed or implied, written or oral shall continue for the period that is the greater of:

- the manufacturer's warranty or guarantee, or
- a period of one year from the date acceptance of the Goods and/or Services, except in respect of latent defect claim shall extend for a period of one year from the date the Goods were placed in service, or
- the period for which these warranties and representations apply in law.

- 12.3 The Supplier agrees to indemnify and hold harmless the Purchaser from any and all claims, liability, loss, damage and expense including special consequential and incidental damages, incurred or sustained by the Purchaser by any reason of any breach of representation or warranty with respect to the Goods and/or Services. Any claim or breach of representation or warranty shall survive inspection, acceptance or payment by the Purchaser.

13. Notices

- 13.1 Notices, invoices and correspondence relating to this Order are to be forwarded to the Purchaser's head office at and must include a reference to the Purchase Order Number.

14. Breach and Termination

- 14.1 In the event of the breach by the Supplier of any terms of this Order, the Purchaser shall be entitled, without prejudice to its other rights, to cancel or amend the Order in respect of any Goods not delivered or Services not performed.

15. Confidential Information

- 15.1 The Supplier will keep confidential all confidential information (including data, instructions, plans, specifications, pricing formulae, technology, computer software, designs, drawings, reports, development, results, technical advice, and trade secrets whether in documentary, visual, oral, machine readable or other form and samples of equipment or other tangible items owned) furnished to it by the Purchaser from the provision of the Goods and/or Services the subject of this Order. Upon completion of this Order, the Supplier shall return to the Purchaser all such items if any received by it, with such items remaining at all times the property of the Purchaser.

16. Force Majeure

- 16.1 Neither the Supplier nor the Purchaser shall be liable to the other for default or delay in performing its obligations under this Order caused by any occurrence beyond its reasonable control including and without limitation, fires, flood, strikes, industrial or social disturbances, riots, wars, acts of God, Government Order or Regulation, storm, tempest or epidemics.

17. Governing Law

- 17.1 This Order shall be subject to the laws of the State of Western Australia and the Commonwealth of Australia. The parties submit themselves to the exclusive jurisdiction of the Courts or Western Australia and the Commonwealth of Australia for all proceedings arising in connection with this Order, which proceedings shall be issued in Western Australia.

18. Contract takes Precedence

- 18.1 If a Contract exists for any Product or Service to Audio Visual Imagenation, and that contract is at variance with the Terms and Conditions of this Purchase Order, then the Terms and Conditions of the Contract will take precedence.

