

## TERMS AND CONDITIONS

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### 1. Definitions

In these Terms:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and associated Regulations as amended;

**Order** means any agreement for the provision of Goods, Equipment or Services by IJS to the Customer;

**Customer** means the person, jointly and severally if more than one, acquiring Goods, Equipment or Services from IJS;

**Equipment** means all equipment including any accessories supplied on hire by IJS to the Customer and where the context permits includes the supply of Services;

**Goods** means goods supplied by IJS to the Customer and where the context permits the terms 'Goods' or 'Services' shall be interchangeable for the other;

**GST** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated Regulations as amended;

**IJS** means IJS Productions Australia Pty Ltd ACN 632 727 130 including where trading as Brisbane Backline.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and associated Regulations as amended;

**Services** means services supplied by IJS to the Customer; and

**Terms** means these Terms and Conditions of Trade.

### 2. Basis of Order

2.1 Unless otherwise agreed by IJS in writing, the Terms apply exclusively to every Order and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by IJS to the Customer for the proposed supply of Goods, Equipment or Services is:

- (a) valid for 14 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 If the Customer wishes to accept a quotation provided by IJS, that acceptance is considered an offer from the Customer to IJS which may then be accepted by IJS in accordance with clause 2.5.

2.4 If there is any inconsistency between terms in a quotation provided by IJS, and these Terms, then the terms in the quotation will apply to the extent of the inconsistency.

2.5 An Order is accepted by IJS when IJS accepts, in writing or electronic means (including by issuing and invoice) an offer from the Customer, or provides the Customer with the Goods, Equipment or Services.

2.6 IJS has absolute discretion to refuse to accept any offer.

2.7 IJS may vary or amend these Terms with reasonable notice to the Customer, including by posting the updated Terms on IJS' website, or otherwise providing a copy (including electronically) to the Customer. Any variations or amendments will apply to orders placed after the notice date.

### 3. Pricing

3.1 Prices quoted for the supply of Goods, Equipment and Services exclude GST and any other taxes or duties imposed on or in relation to the Goods, Equipment and Services (unless otherwise stated).

3.2 If the Customer requests any variation to the Order, IJS may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by IJS in relation to Goods, Equipment or Services, IJS may vary its price to take account of any such change, by notifying the Customer. If the variation in price amounts to a material change, the Customer may within 7 days of notice of the variation elect to terminate the Order, but only if Goods, Equipment or Services have not at that time been delivered in whole or in part.

### 4. Payment

4.1 Unless otherwise specified in IJS' invoice, the terms of the Order, or agreed in writing:

- (a) Deposits (if any) specified in the Order must be paid before supply of the Goods, Equipment or Services will be made;
- (b) Subject to 4.1(c), full payment for the Goods, Equipment or Services must be made in accordance with the payment terms specified in the Order, or if none, within 14 days of the date of IJS' invoice.
- (c) IJS reserves the right to require payment in full on delivery of the Goods, Equipment or completion of the Services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at IJS' sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

### 5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to IJS, then all money which would become payable by the Customer to IJS at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and IJS may, without prejudice to any of its other accrued or contingent right :

- (a) charge the Customer interest on any sum due at the prevailing rate for post-judgement interest pursuant to the *Civil Proceedings Act 2011* (Qld) for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify IJS from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Order or to recover any Goods;
- (c) take possession of the Goods/Equipment in accordance with clause 7.1(e);
- (d) cease or suspend supply of any further Goods, Equipment or Services to the Customer; and/or
- (e) by written notice to the Customer, terminate any uncompleted Order with the Customer.

5.2 Clauses 5.1(d) and 5.1(e) may also be relied upon, at IJS' option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

### 6. Performance of Order

6.1 Any period or date for delivery of Goods/Equipment or provision of Services stated by IJS is an estimate only and not a contractual commitment.

6.2 IJS will use its reasonable endeavours to meet any estimated dates for delivery of the Goods/Equipment but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date, unless required by law.

6.3 If IJS cannot complete the Services by any estimated date, it will complete the Services within a reasonable time.

- 7. Passing of Property**
- 7.1 Until IJS receives full payment in cleared funds for all Goods and Services supplied by it to the Customer:
- title and property in all Goods remain vested in IJS and do not pass to the Customer;
  - the Customer must hold the Goods as fiduciary bailee and agent for IJS;
  - the Customer must keep the Goods separate from its Goods and maintain IJS' labelling and packaging;
  - the Customer must hold the proceeds of sale of the Goods on trust for IJS in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and
  - in addition to its rights under the PPSA, IJS may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other Goods not the property of IJS, and for this purpose the Customer irrevocably licences IJS to enter such premises and also indemnifies IJS from and against all costs, claims, demands or actions by any party arising from such action.
- 8. Personal Property Securities Act**
- 8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 8.2 For the purposes of the PPSA:
- terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
  - these Terms are a security agreement and IJS has a Purchase Money Security Interest in all present and future Goods/Equipment supplied by IJS to the Customer and the proceeds of the Goods/Equipment;
  - the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
  - the Customer must do whatever is necessary in order to give a valid security interest over the Goods/Equipment which is able to be registered by IJS on the Personal Property Securities Register.
- 8.3 The security interest arising under this clause 8 attaches to the Goods/Equipment when the Goods/Equipment are collected or dispatched from IJS' premises and not at any later time.
- 8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 8.5 IJS and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA shall apply to these Terms.
- 8.6 To the extent permitted by the PPSA, the Customer agrees that:
- the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on IJS will apply only to the extent that they are mandatory or IJS agrees to their application in writing; and
  - where IJS has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 8.7 The Customer must immediately upon IJS' request:
- do all things and execute all documents necessary to give effect to the security interest created under this Order; and
  - procure from any person considered by IJS to be relevant to its security position, such agreements and waivers (including as equivalent to those above) as IJS may at any time require.
- 8.8 IJS may allocate amounts received from the Customer in any manner IJS determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods/Equipment supplied by IJS.
- 8.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of Goods/Equipment and details of the Goods/Equipment shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Goods, Equipment or Services, except as otherwise required by law or that is already in the public domain.
- 9. Risk and Insurance**
- 9.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the Goods being delivered to the Customer or dispatched from IJS' premises.
- 9.2 The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.
- 9.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the Goods sold by IJS, unless recoverable from IJS on the failure of any statutory guarantee under the ACL or otherwise required by law.
- 10. Delivery**
- 10.1 Subject to clause 10.6, IJS will arrange for the delivery of the Goods/Equipment to the Customer.
- 10.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods/Equipment to the Customer to the point of delivery.
- 10.3 IJS may make part delivery of Goods/Equipment or provision of Services and IJS may invoice the Customer for the Goods or Services provided.
- 10.4 The Customer indemnifies IJS against any loss or damage suffered by IJS, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer under the ACL and IJS has not used due care and skill.
- 10.5 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the Goods/Equipment. The Customer is liable for storage charges payable monthly on demand.
- 10.6 If agreed that the Customer will collect the Goods/Equipment:
- the Customer must collect the Goods/Equipment with 7 days of being advised they are ready; and
  - if the Customer does not collect the Goods/Equipment within this time, the Customer is deemed to have taken delivery of the Goods/Equipment and is liable for storage charges payable monthly on demand.
- 11. Equipment Hire**
- 11.1 Equipment shall at all times remain the property of IJS and is returnable on demand by IJS. The Customer must not rehire or sub-let the Equipment or any part of it to any person.
- 11.2 In the event that Equipment is not returned to IJS in the same condition in which it was delivered, IJS retains the right to charge the Customer the full cost of repairing the Equipment.
- 11.3 In the event the Equipment is not returned to IJS, IJS retains the right to charge the Customer the full cost of replacing the Equipment.
- 11.4 The Customer must:
- 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;
  - not alter or make any additions to the Equipment including but not limited to altering, making any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or otherwise in any manner interfere with the

- Equipment;  
(c) keep the Equipment complete with all parts and accessories and in a clean and good order as delivered;  
(d) use and operate the Equipment in accordance with the instructions supplied and the manufacturer's recommendations; and  
(e) comply with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the Equipment.
- 11.5 The Customer agrees to insure the Equipment, third parties and third party property including adequate Public Liability insurance against all risks arising from the use of the Equipment and agrees to indemnify IJS against all and any loss or damage including but not limited to any loss due to fire, theft, burglary and all other usual risks.
- 11.6 The Customer must not use the Equipment nor permit it to be used in a manner which would permit an insurer to decline any claim.
- 11.7 The Customer must allow IJS' servants, agents and insurers access to the Equipment at all reasonable times to deliver, remove, inspect, test, adjust, maintain, repair or replace it and is responsible for providing safe and proper access,
- 12. Liability**
- 12.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods, Equipment or Services, the Order does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods, Equipment or Services or any contractual remedy for their failure.
- 12.2 If the Customer is a consumer under the ACL nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against IJS for failure of a statutory guarantee under the ACL.
- 12.3 If the Customer on-supplies the Goods to consumer under the ACL:
- (a) if the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of IJS' liability to the Customer;
- (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of IJS' liability to the Customer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.
- 12.4 If clause 12.2 or 12.3 do not apply, then other than as stated in the Terms or any written warranty statement IJS is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.
- 12.5 IJS is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 12.6 The Customer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by IJS in relation to the Goods, Equipment or Services or their use or application; and
- (b) it has not made known, either expressly or by implication, to IJS any purpose for which it requires the Goods, Equipment or Services and it has the sole responsibility of satisfying itself that the Goods, Equipment or Services are suitable for the use of the Customer.
- 12.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.
- 13. Cancellation**
- 13.1 If IJS is unable to deliver or provide the Goods, Equipment or Services, then it may cancel the Order (even if it has been accepted) by written notice to the Customer.
- 13.2 No purported cancellation or suspension of an Order or any part of it by the Customer is binding on IJS once the Order has been accepted.
- 14. Shortages and Exchanges**
- 14.1 Subject to clause 14.2 and 14.4, IJS will not be liable for any shortages, damage or non-compliance with the specifications in the Order unless the Customer notifies IJS with full details and description within 10 days of delivery otherwise the Customer is deemed to have accepted the Goods.
- 14.2 When any shortages, claim for damaged Goods or non-compliance with the Order specifications is accepted by IJS, IJS may, at its option, replace the Goods, or refund the price of the Goods.
- 14.3 Subject to clause 14.4, IJS will not under any circumstances accept Goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Order;
- (b) are discontinued Goods or no longer stocked by IJS;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.
- 14.4 If the Customer is a consumer under the ACL, nothing in this clause 14 limits any remedy available for a failure of the consumer guarantees in the ACL.
- 15. Force Majeure**
- 15.1 IJS is not liable in any way howsoever arising under the Order to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, IJS may suspend or terminate the Order by written notice to the Customer.
- 16. Miscellaneous**
- 16.1 The law of Queensland, Australia from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 16.2 IJS' failure to enforce any of these Terms shall not be construed as a waiver of any of IJS' rights.
- 16.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 16.4 A notice must be in writing and handed personally or sent by email, fax or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by fax or email are deemed received on confirmation of successful transmission.
- 16.5 The Customer must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Order.