

# TERMS & CONDITIONS

This Agreement governs the supply of any Goods and Services by AV 24/7 Pty Ltd or any of its Related Bodies Corporate ("AV 24/7") to you ("the Customer"). Unless otherwise specifically agreed in writing by AV 24/7, all orders placed by the Customer with AV 24/7 for supply of Goods will be on the following terms and conditions.

The Customer acknowledges and agrees that these Terms & Conditions apply to every supply of Goods from time to time by AV 24/7 to the Customer (or its related entities) and agrees to be bound by the Terms & Conditions without receiving a further copy of these Terms on the instance of each supply. AV 24/7 warrants to provide an updated copy of these Terms & Conditions if they are subsequently amended.

If AV 24/7 has provided to the Customer a quote which attaches these Terms and in which quote any item contained in the Schedule is described, the description contained in such quote shall apply if the Schedule is left blank in respect of that item.

## 1. DEFINITIONS & INTERPRETATION

### DEFINITIONS

1.1. In this Agreement, the following terms have their corresponding meaning unless the context otherwise requires:

- . a) Delivery Date means the date on which the Goods are to be delivered by AV 24/7 to the Delivery Location specified by the Customer as described in the Schedule;
- . b) Delivery Location means the site without the Goods are to be installed and operated during the Term as described in the Schedule;
- . c) Dry Hire means an alternative method for supply of the Goods to a Customer in circumstances where AV 24/7 has, in its sole discretion, approved the Customer for a Dry Hire arrangement. The specific terms for delivery and return of the Goods for a Dry Hire arrangement are contained in this Agreement and all other provisions contained herein continue to apply to a Dry Hire arrangement.
- . d) Goods means the goods all equipment to be provided by AV 24/7 to the Customer pursuant to this Agreement as described in the Schedule;
- . e) GST has the meaning ascribed to that term in the Act entitled A New Tax System (Goods and Services Tax) Act 1999;
- . f) Invoice Terms means the terms for payment of the Price on delivery of an invoice by AV 24/7 to the Customer;
- . g) Late Fee means the fee described in the Schedule to be charge by AV 24/7 to the Customer if the Customer fails to provide access to the Delivery Location, or to return the Goods, on the Return Date;
- . h) Payment Terms means the requirements for payment of the Price imposed by AV 24/7 on the Customer as described in the Schedule;
- . i) Price means the total price charged by AV 24/7 for the supply of the Goods and Services pursuant to this Agreement as described in the Schedule;
- . j) Re-Delivery Fee means the fee imposed by AV 24/7 for the re- delivery of the Goods and Services to the Customer if the Customer fails to provide access to the Delivery Location at the original agreed time for delivery and the Goods and Services are to be re-delivered at an alternative time or date;
- . k) Related Bodies Corporate has the meaning ascribed to that term in the Corporations Act 2001;
- . l) Return Date means the date for the return of the Goods to AV 24/7 as described in the Schedule;
- . m) Services means any and all services to be provided by AV 24/7 to the customer in relation to the Goods during the Term as described in the Schedule;
- . n) Schedule means the schedule appearing at the commencement of this Agreement;
- . o) Term means the period commencing on the date of this Agreement and ending on the return of the Goods to AV 24/7;

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## 2. SUPPLY AND PAYMENT

### SUPPLY

- . 2.1. Provided the Customer has complied with the Payment Terms described in this Agreement, AV 24/7 will, on the Delivery Date, supply the Goods to the Delivery Location and provide the Services in respect of those Goods.
- . 2.2. The Customer must ensure that access to the Delivery Location is made available to AV 24/7 for inspection on a date agreed by the parties prior to the Delivery Date.
- . 2.3. AV 24/7 will, on the Return Date, attend at the Delivery Location for the removal of the Goods. The Customer acknowledges that the Return Date may fall on a weekend or public holiday and the Customer must ensure that access to the Delivery Location will be available for return of the Goods on that date.
- . 2.4. If the Customer fails to provide to AV 24/7 access to the Delivery Location at the agreed time on the Delivery Date or the Return Date, additional fees made be imposed as described in this Agreement.
- . 2.5. If the Customer wishes to extend the Return Date, the Customer must request the extension from AV 24/7 as soon as practicable. AV 24/7 may, in its sole discretion, refuse to approve any requested extension of the Return Date and is under no obligation to provide its reasons for doing so.

### DRY HIRE

- . 2.6. If AV 24/7 approves a Customer as being an experienced business operating the same or similar goods, AV 24/7 may, in its sole discretion, approve a Dry Hire arrangement in which case the various provisions of this Agreement specifically relating to a Dry Hire will apply. All other provisions of this Agreement continue to apply to any Dry Hire arrangement save for where specific provisions apply.
- . 2.7. If this Agreement relates to a Dry Hire arrangement, the Customer must collect the Goods on the Delivery Date and must return the Goods to AV 24/7 on the Return Date.
- . 2.8. If this Agreement relates to a Dry Hire arrangement and the Customer fails to return the goods to AV 24/7 on the Return Date, additional fees may be imposed as described in this Agreement.
- . 2.9. If this Agreement relates to a Dry Hire arrangement and the Customer wishes to

extend the Return Date, the Customer must request the extension from AV 24/7 as soon as practicable. AV 24/7 may, in its sole discretion, refuse to approve any requested extension of the Return Date and is under no obligation to provide its reasons for doing so.

### PRICE

2.10. The Price for the supply of the Goods and Services (if any) is described in the Schedule.

2.11. Additional fees may be imposed if:

- a) access to the Delivery Location is not provided to AV 24/7 at the agreed time on the Delivery Date;
- b) access to the Delivery Location is not provided to AV 24/7 at the agreed time on the Return Date;
- c) the Goods are not returned under a Dry Hire arrangement on the Return Date;
- d) additional goods or services are required during the Term which are not described as Goods.

2.12. If the Customer fails to provide to AV 24/7 access to the Delivery Location at the agreed time on the Delivery Date then the Re-Delivery Fee may apply.

2.13. If the Customer fails to provide to AV 24/7 access to the Delivery Location at the agreed time on the Return Date, AV 24/7 may charge the Customer a continuing rental fee for the Goods which will be calculated at the Price for the Goods on a pro rata basis from the Return Date until such time as AV 24/7 is granted access to the Delivery Location for the return of the Goods. A daily Late Fee may be imposed for every day after the Return Date that the Goods are not returned.

2.14. If this Agreement is a Dry Hire arrangement and the Customer fails to return the Goods on the Return Date, AV 24/7 may charge the Customer a continuing rental fee for the Goods which will be calculated at the Price for the Goods on a pro rata basis from the Return Date until such time as the Customer returns the Goods to AV 24/7. A daily Late Fee may be imposed for every day after the Return Date that the Goods are not returned.

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## PAYMENT

- . 2.15. The Price must be paid in full by the Customer to AV 24/7 at least 48 hours prior to the Delivery Date.
- . 2.16. If the payment of the Price has not been received in cleared funds by AV 24/7 at least 48 hours prior to the Delivery Date then AV 24/7 may, in its sole discretion, elect not to supply the Goods and Services or agree to an alternative Delivery Date.
- . 2.17. If the Customer has an account with AV 24/7, AV 24/7 may, in its sole discretion, allow payment of the Price pursuant to its Invoice Terms. AV 24/7 is under no obligation to allow payment of the Price on Invoice Terms even if AV 24/7 has previously allowed payment in this manner and despite any prior or continuing relationship between the Customer and AV 24/7.

## 3. CUSTOMER OBLIGATIONS AND WARRANTIES

### OBLIGATIONS

- . 3.1. The Customer agrees to pay the Price pursuant to the Payment Terms.
- . 3.2. The Customer must provide access to the Delivery Location at the time agreed with AV 24/7 for the purpose of AV 24/7 supplying the Goods and Services. If the Customer fails to provide access to the Delivery Location at the agreed time, AV 24/7 may, in its sole discretion, elect not to deliver the Goods and to return the Goods to AV 24/7. AV 24/7 may, in its sole discretion, allow the Customer to nominate an alternative time or Delivery Date for the supply of the Goods and Services. The Customer will be liable to pay a Re-Delivery Fee which represents the cost to AV 24/7 of the failed delivery attempt.
- . 3.3. The Customer must undertake its own enquiries regarding the Goods and whether they are appropriate for the intended purpose. The Customer acknowledges, to the extent permitted by law, that it has not relied only representation, promise or undertaking made by AV 24/7 or by anyone on the half of AV 24/7 except as expressly disclose this Agreement.
- . 3.4. The Goods must only be used for the purpose for which the Goods are supplied.

3.5. The Customer will be responsible for all damage to the Goods or other loss to AV 24/7 as a result of this Agreement including, but not limited to, damage by way of fire, theft, vandalism, weather conditions, flood or water occurring at any time during the Term of this Agreement.

3.6. The Customer acknowledges that it is liable for the cost to repair or replace damaged or broken Goods which will be charged by AV 24/7 into the Customer and the cost price for such repair or replacement.

### WARRANTIES

3.7. If this Agreement is a Dry Hire arrangement, the Customer warrants that it has sufficient skill and experience with the Goods to safely install and operate the Goods and takes full responsibility for the correct use of the Goods. The Customer must only use the Goods for the purpose for which the Goods are supplied and all Goods must only be operated in accordance with the manufacturer's instructions. If technical support is required by the Customer in respect of the Goods, AV 24/7 may provide such technical support by telephone at a charge to the Customer of \$50 (plus GST) per call.

3.8. The Customer warrants that it has all will obtain all necessary licences (including music licences) and approvals required for the use of any 3<sup>rd</sup> party intellectual property in respect of its event.

3.9. The Customer warrants, at all times during the Term, except with the express prior written consent of AV 24/7, that it will:

- . a) not, unless this is a Dry Hire arrangement, and will not allow anyone else to, install, operate, change, unplug, pack down, move or remove any Goods or move Goods from the location where they have been installed by AV 24/7. If AV 24/7 provides its consent to the Customer dealing with the Goods, the Customer must follow the instructions of AV 24/7 precisely and correctly;
- . b) keep the Goods safe and ensure that the location at which the Goods will be installed is a safe location for the installation and use of the Goods;
- . c) keep the Goods in a careful and proper manner and not interfere with

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or allow anyone else to interfere with the Goods;

d) keep the Goods at the Delivery Location;

e) not sell, charge, pledge or part with possession of the Goods.

## 4. TITLE AND RISK

- . 4.1. AV 24/7 retains at all times all right, title and interest in the Goods. The Customer acknowledges and agrees that it has no interest in the Goods and shall claim no right, title or interest in the Goods.
- . 4.2. The Customer acknowledges that its use of any licensed software accompanying the supply of the Goods and Services (including licence by Microsoft) is subject to the licence agreement for use of such software and the Customer accepts the terms and conditions of such licence.
- . 4.3. Risk in the Goods immediately passes to the Customer when the Goods are leave the possession or control of AV 24/7 or its employees.
- . 4.4. If this Agreement is a Dry Hire arrangement, the Customer is responsible for the safe collection and return of the Goods at its own cost.
- . 4.5. The Customer is liable for the loss, theft, damage or destruction of the Goods while the Goods are in the possession or control of the Customer. If the Goods are not returned to AV 24/7 or are returned bearing damage, AV 24/7 may in its sole discretion determine whether to repair or replace the Goods. The cost of such repair or replacement of the Goods will be charged to the Customer. The Customer acknowledges and agrees to pay any invoice issued by AV 24/7 in relation to repairs or replacements to the Goods pursuant to the terms of the invoice.
- . 4.6. The Customer is solely responsible to obtain all necessary insurance to cover its event which may include public liability and property damage insurances. AV 24/7 does not insure any part of the Customer's event and is not responsible for any liability arising from or as a result of the Customer hiring the Goods or conducting the event.

## PERSONAL PROPERTY SECURITIES ACT 2009 ("THE ACT")

4.7. The Customer is granted possession of the Goods subject to AV 24/7's continuing title in the goods. AV 24/7 retains and may, in its absolute discretion, register a

purchase money security interest in the Goods and the parties acknowledge and agree that AV 24/7 is entitled to register a Financing Statement under the Act.

4.8. The Customer agrees to execute any documents, provide any required

information and do anything else required by AV 24/7 to allow the security interest to be perfected as required by the Act.

4.9. The Customer acknowledges and agrees that,

- . a) AV 24/7 retains full legal and equitable title in the Goods;
- . b) the Customer holds the goods for AV 24/7 as bailee or fiduciary and must store the Goods securely and separately from other items owned by the Customer;
- . c) the Customer must not dispose of the goods or any interest in them or alter them in any way;
- . d) if the Customer disposes of the goods then the Customer must hold all proceeds of sale of the Goods on trust for AV 24/7 and pay such proceeds to AV 24/7 on demand.

## 5. INTELLECTUAL PROPERTY AND MATERIALS

5.1. The Customer acknowledges that supply of the Goods and Services by AV 24/7 does not include any licence or consent for the use of any 3<sup>rd</sup> party intellectual property including any copyright, design, trade mark, rights in or to play music or film, or in any graphic, printed or other material or media of any kind or use of any confidential information in any way used at or forming part of the Customer's event.

5.2. The Customer is solely responsible for and must obtain all necessary licences (including music licences) and approvals.

5.3. The Customer acknowledges and agrees that AV 24/7 can use photographs and images taken of the Customer's event and other materials created or provided for such event ("Materials") for promotional purposes including as examples of the work provided by AV 24/7 and in any brochure, newsletter, manual, report, website or other media, and such use may include the Customer's business or company name or other intellectual property as it appears in the Materials without liability or compensation to the Customer.

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5.4. The Customer further agrees that AV 24/7 may alter the Materials and AV 24/7 determines in its sole discretion including removing the name or other intellectual property of the Customer without obtaining the Customer's prior approval.

## 6. CUSTOMER INDEMNITIES

6.1. The Customer indemnifies and will keep indemnified AV 24/7 from and against all and any Claims including any loss or damage incurred by AV 24/7 arising from the Customer failing to comply with its obligations or breaching any warranty given by the Customer pursuant to this Agreement.

## 7. AV 24/7 OBLIGATIONS AND LIMITED WARRANTY

- . 7.1. AV 24/7 will use its reasonable endeavours to attend the Delivery Location at the agreed time for delivery of and return of the Goods. If AV 24/7 is delayed then the Customer will be notified but such delay will not entitle the Customer to terminate this Agreement.
- . 7.2. AV 24/7 warrants that the Goods are of merchantable quality and fit for the purpose for which they were designed. All other warranties whether express, implied, statutory or otherwise, relating in any way to the Goods or Services are, to the extent permitted by law, excluded.
- . 7.3. The liability of AV 24/7 under this Agreement shall be limited, at the option of AV 24/7, to any one or more of the following:
  - a) re-supply of the Goods and Services at a time and location agreed between the parties; or
  - b) refund of the Price and any other payments made by the Customer under this Agreement.
- . 7.4. The maximum aggregate amount that a Customer may recover from the Company (whether by way of damages or otherwise) under the warranties is limited to the aggregate amount paid by that Customer under this Agreement on the date on which notice is received by AV 24/7.
- . 7.5. AV 24/7 is not liable to make any payment (whether by way of damages or otherwise) to the Customer for any indirect, consequential or economic loss or loss of profits which may be suffered or incurred by the Customer in respect of the supply of the Goods or Services by AV

24/7 however arising or the failure or omission by AV 24/7 to comply with its obligations under this Agreement including, without limitation, negligence.

## TERMINATION OF AGREEMENT

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#### IMMEDIATE TERMINATION – PRICE REFUNDED

- 8.1. If AV 24/7 is unable to supply the Goods of Services to the Customer for any reason, AV 24/7 may immediately terminate this Agreement.
- 8.2. If AV 24/7 is delayed by more than 24 hours in supplying the Goods and no alternative arrangement for supply of the Goods and Services has been agreed, the Customer may immediately terminate this Agreement.
- 8.3. If this Agreement is terminated by AV 24/7 or the Customer pursuant to clauses 8.1 or 8.2 above, AV 24/7 will, within 14 days of termination, provide to the Customer a full refund of the Price (including any additional payments made by the Customer) pursuant to this Agreement.

#### TERMINATION PRIOR TO DELIVERY DATE

- . 8.4. If the Customer provides to AV 24/7 notice of its intention to terminate this Agreement, AV 24/7 may refund the Price and any other payments made by the Customer to AV 24/7 pursuant to this Agreement. The amount of refund that the Customer may be entitled to will depend on the notice period provided by the Customer as described below.
  - a) More than 30 days' notice – full refund
  - b) More than 14 days' notice – 75% refund
  - c) More than 7 days' notice – 50% refund
  - d) More than 48 hours' notice – 25% refund
  - e) Less than 48 hours' notice – no refund.
- . 8.5. Any refund granted by AV 24/7 to the Customer on termination of this Agreement shall be paid by AV 24/7 to the Customer within 14 days of receipt by AV 24/7 of notice of such termination. The parties acknowledge and agree that any amount retained by AV 24/7 is a genuine estimate of the loss and damage

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suffered by AV 24/7 as result of termination of the Agreement.

## TERMINATION BY AV 24/7 – NO REFUND

- 8.6. AV 24/7 may, during the Term of this Agreement, terminate this Agreement and recover the Goods from the Customer in the following circumstances:
  - a) if AV 24/7 becomes aware of the Customer dealing in any way with the Goods in breach of this agreement;
  - b) if AV 24/7 becomes aware that the Delivery Location (or any other location where the Goods are held) are, in the sole opinion of AV 24/7, unsafe or that the Goods are at risk;
  - c) if any payments due from the Customer to AV 24/7 pursuant to this or any other agreement between the Customer and AV 24/7 are not paid pursuant to the payment terms;
  - d) the Customer breaches its obligations and warranties under this Agreement; or
  - e) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration or if the Customer dies or threatens to dissolve its business structure or if the Customer ceases to conduct its business in the normal manner.
- 8.7. The Customer will be entitled to no refund of any amount paid by the Customer pursuant to this Agreement on termination by AV 24/7 of this Agreement pursuant to clause 8.6 above. If any amount due and payable by the Customer pursuant to this Agreement remains unpaid at the date of termination, such amount will immediately become due and payable as a debt owed by the Customer to AV 24/7 and AV 24/7 will be entitled to take all necessary steps to cover such debt.
- 8.8. The parties acknowledge that the retention by AV 24/7 of the amounts paid by the Customer pursuant to this agreement represent a genuine estimate of the loss and damage suffered by AV 24/7 as result of the termination of the Agreement.
- 8.9. On termination of this Agreement by either party, AV 24/7 shall be released from any and all further obligations under this Agreement.

## 9. MISCELLANEOUS PROVISIONS

9.1. The Customer acknowledges that if, after receiving a copy of these Terms, it provides to AV 24/7 any instructions or request to proceed with this contract such instructions or request will constitute acceptance by the Customer of these Terms regardless of whether the Customer has signed the Terms.

9.2. The rights and obligations of the parties in respect of agreements, indemnities, covenants and warranties contained in this document

a) are continuing agreements, covenants, indemnities and warranties and accordingly,

b) are not merged or extinguished by the partial performance by a party of their obligations under this document, and will remain in full force and effect until the obligations of all parties under this document are discharged in full.

9.3. Each of the parties agree that they will execute and deliver such further

documents at their own expense as they may reasonably be requested by any other party to properly and fully effect the purpose of this document.

9.4. No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement herein shall be deemed to be

a) a waiver of strict and literal performance of and compliance with any other provisions, conditions, or requirement herein

b) a waiver of or in any other manner release any party from strict compliance with any provision, condition or requirement in the future.

9.5. Any delay or omission by any party to exercise any rights provided for in this document does not in any manner impair the exercise of any such right accruing to it thereafter.

9.6. This document

a) is governed by the law of the State of New South Wales and each of the parties irrevocably submits to the non-exclusive jurisdiction of the State of New South Wales

b) may not be modified, amended, added to or otherwise varied except

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by a document in writing executed by all of the parties

c) shall continue for the benefit of and be binding upon the parties hereto and their respective successors and assigns.

. d) may not be assigned by any party without the prior written consent of all of the parties.

. e) may be executed in two or more counterparts, each of which shall be

deemed an original, but all of which together shall constitute one and the same instrument, and

f) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and extinguishes all prior agreements or deeds and understandings between the parties.