

STANDARD TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS FORM THE BASIS FOR EVERY CONTRACT CONCLUDED WITH THE SUPPLIER AND THE ACCEPTANCE BY A CUSTOMER OF ANY GOOD SHALL COMPRISE ACCEPTANCE OF THESE TERMS.

1 DEFINITIONS

In this document (**Terms and Conditions**):

- (a) **Application** means the application by the Customer to the Supplier for commercial credit;
- (b) **Contract** means the contract formed between the Supplier and the Customer by an Order accepted by an Order Acknowledgment;
- (c) **Customer** means the person placing the Order with the Supplier;
- (d) **Deposit** is defined in clause 5(a);
- (e) **Goods** means any goods, products, services or materials to be supplied by the Supplier;
- (f) **Order** is defined in clause 2(a);
- (g) **Order Acknowledgment** is defined in clause 2(b);
- (h) **Party** means the Supplier or the Customer as the context requires;
- (i) **State** means Victoria and the Commonwealth of Australia as the context requires;
- (j) **Supplier** means Event Timing Pty Ltd,

and, unless otherwise stated, an expression used or defined in the *Corporations Act 2001* has the same meaning in the Terms and Conditions.

2 ORDERS, ORDER ACKNOWLEDGMENTS AND CONTRACT

- (a) An Order or an offer to purchase Goods may be made by the Customer in writing or verbally.
- (b) An Order is accepted when the Customer receives from the Supplier an acknowledgement of that Order (**Order Acknowledgment**) in writing or if writing is not received, acknowledgment verbally or delivery, whichever first occurs.
- (c) When an Order is accepted by an Order Acknowledgment, the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing, the Order Acknowledgment and these Terms and Conditions.
- (d) Previous dealings between the Supplier and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.

- (f) A Contract constitutes the entire agreement between the Supplier and the Customer with respect to the Goods supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Customer's terms and conditions of purchase (if any).

3 PRICES

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be:
 - (i) exclusive of any transaction tax (**transaction tax** includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions); and
 - (ii) as per the price determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price determined by the Supplier as at that date of delivery.
- (b) Where a transaction tax applies to any supply made under these Terms and Conditions, the Supplier may recover from the Customer an additional amount on account of that transaction tax.
- (c) Notwithstanding any provision in the Contract, the Supplier may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

4 DELIVERY

- (a) The Supplier will make all reasonable efforts to have the Goods delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement then at the Supplier's reasonable discretion), but the Supplier shall not be liable for:
 - (i) any failure to deliver or delay in delivery for any reason; or
 - (ii) any damage or loss due to unloading or packaging; or
 - (iii) damage to property caused upon entering premises to deliver the Goods.
- (b) Any costs incurred by the Supplier due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to the Supplier. Except as required by law, the Supplier will

be under no obligation to accept Goods returned for any reason.

5 DEPOSIT AND SECURITY

(a) The Supplier may request the Customer for an amount of money or other security (including a credit card reservation) to be held as a deposit (**Deposit**) for payment for the Goods.

(b) The Customer shall forfeit the Deposit if the Hirer for any reason cancels its Order for the Goods.

6 PAYMENT

Payment for the Goods must be made in full (without any set off except as made by the Supplier) and received by the Supplier by the last business day of the month following the month of delivery unless otherwise identified by the Supplier on any statement of account or invoice. Payment is only received by the Supplier when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Supplier's bank account.

7 TITLE AND RELATED MATTERS

(a) The legal and equitable title to the Goods will only be transferred from the Supplier to the Customer when the Customer has met and paid all that is owed to the Supplier on any account whatsoever.

(b) The Customer acknowledges that until the Customer has met and paid all that is owed to the Supplier on any account whatsoever, the Customer holds the Goods as bailee for the Supplier and that a fiduciary relationship exists between the Customer and the Supplier.

(c) Until the Supplier receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as a fiduciary of the Supplier, clearly showing the Supplier's ownership of the Goods and, shall keep books recording the Supplier's ownership of the Goods and the Customer's sale or otherwise of them in accordance with clause 7(e). The Customer, if required, shall deliver the Goods up to the Supplier.

(d) If the Customer defaults, in addition to clause 8(b), the Supplier may take possession of the Goods wherever the Goods are located and the Customer agrees that representatives of the Supplier may enter upon the Customer's premises for that purpose.

(e) If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for the Supplier and not mix those proceeds with any other monies.

(f) Notwithstanding the above, the Customer is still required to pay the Supplier for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.

8 DEFAULT

(a) The Customer will be in default if:

(i) the Customer breaches the Terms and Conditions;

(ii) payment for the Goods has not been received by the Supplier by the due date of payment;

(iii) the Customer being an individual commits an act of bankruptcy, dies or becomes permanently incapacitated or becomes an insolvent under administration;

(iv) the Customer being a body corporate becomes an externally-administered body corporate or has an application for winding up filed against it;

(v) the Supplier forms the opinion that the Customer's credit worthiness or credit standing alters from that indicated in its Application.

(b) If the Customer defaults, the Supplier may:

(i) treat the whole of the Contract and any other Contract with the Customer as repudiated and sue for breach of contract; and/or

(ii) refuse to supply any Goods to the Customer; and/or

(iii) claim the return of any Goods in the Customer's possession where title has not passed to the Customer; and/or

(iv) without notice to the Customer withdraw or vary any credit the Supplier has provided to the Customer; and/or

(v) without notice to the Customer make all monies owing by the Customer to the Supplier on any account immediately due and payable.

(c) Termination of a Contract shall not affect rights and remedies accrued or accruing to a Party prior to the termination.

9 RISK

Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.

10 CREDIT

(a) The Supplier may grant the Customer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by the Supplier.

(b) Until the Supplier grants the Customer credit by notice in writing, the Supplier will only supply Goods to the Customer on the basis of cash in advance.

(c) The granting of credit does not oblige the Supplier to extend any particular amount of credit to the Customer.

(d) The Customer must notify the Supplier in writing if there is any change in the shareholding or ownership

of the Customer or any material change in the Customer's financial position.

- (e) The Customer agrees that if requested by the Supplier the Customer will:
 - (i) charge in favour of the Supplier all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Customer to the Supplier;
 - (ii) execute a mortgage or other instrument of security in form requested by the Supplier.

11 INTELLECTUAL PROPERTY

- (a) The Customer warrants to the Supplier that all documents provided by the Customer are accurate and that the Supplier is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (b) The Customer indemnifies the Supplier against all claims and all losses and damages incurred by the Supplier as a result of documents provided by the Customer to the Supplier for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (c) If the Customer receives any confidential information from the Supplier the Customer may not use or disclose such information unless it receives the prior written consent of the Supplier, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

12 FORCE MAJEURE

The Supplier is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:

- (a) circumstances outside the Supplier's control;
- (b) failure of the Supplier's machinery; or
- (c) failure of a supplier to the Supplier.

13 REPRESENTATIONS AND FITNESS FOR PURPOSE

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.

14 LIMITATION OF LIABILITY

- (a) Subject to clause 13(a), the Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in

connection with the Contract for contract, tort (including negligence), under statute, in equity or otherwise shall be as follows:

- (i) if the Supplier is in breach of a Contract the Supplier's liability is strictly limited to:
 - (A) for goods, products or materials - the cost of replacement of the defective Goods as soon as reasonably practicable, or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods at the option of the Supplier;
 - (B) for services - to the provision of the services again or payment of the cost of having the relevant services provided again at the option of the Supplier;
- (ii) the Supplier's liability for breach of a Contract does not extend beyond the defective Goods to any other Goods that are part of an Order or otherwise;
- (iii) where loss or damage is not covered by clause 14(a)(i), the Supplier is not liable to the Customer under statute, in equity or in tort (including negligence or otherwise) for any loss or damage to person or property arising from or caused in any way by the Goods;
- (iv) the Supplier shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods;
- (v) **indirect, special or consequential loss or damage** includes:
 - (A) any loss of income, profit or business;
 - (B) any loss of goodwill or reputation;
 - (C) any loss of value of intellectual property.
- (b) Any claim by the Customer in respect of defective Goods and/or damaged Goods must be made in writing within 14 days of the delivery of the Goods.
- (c) The Supplier's obligations in the event of Clause 14(a) applying do not include:
 - (i) the cost of removal of defective Goods whether installed or otherwise;
 - (ii) the cost of installation of replacement for defective Goods;
 - (iii) defects in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

15 INDEMNITY

The Customer indemnifies the Supplier against any action, claim, proceeding, demand, damages, loss, liability, cost or expense (including costs on a solicitor/ client basis) which the Supplier may suffer or incur arising out of or connected with this document or any Contract or the Goods.

16 MEASURES

- (a) Any and all statements made by the Supplier as to weight, length, quantity or other characteristics of Goods are approximate and the Supplier may supply Goods on an actual or calculated basis.
- (b) A calculated basis will be in accordance with the applicable Australian standards.
- (c) The Supplier's statements as to weight, length, quantity or other characteristics are final and the Supplier is not liable for any errors in such statements unless the Customer gives the Supplier:
 - (i) written notice of any error within 14 days of delivery;
 - (ii) a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

17 SHORTAGES

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of Goods may be made unless such claim is notified to the Supplier with forty-eight (48) hours of such inspection.
- (b) The Supplier will endeavour to rectify any shortages as soon as practicable after receiving notice but will not suffer any liability from or in respect of such rectification.

18 DEFAULT INTEREST

Any amounts due to the Supplier and unpaid or any other payments made by the Supplier in default of payment by the Customer under a Contract shall be regarded as cash advances made on the due date or the date of payment by the Supplier respectively, repayable on demand and shall, until repayment to the Supplier, bear interest calculated on the daily balances of such advances at a rate equal to 12% per annum calculated daily and paid on written demand or as instructed by the Supplier.

19 NO PARTNERSHIP, AGENCY OR TRUSTEESHIP

Nothing in this Agreement or in the execution or performance of its terms shall constitute any Party the partner or agent of any other Party and no trusteeship shall be implied as between any of the parties.

20 WAIVER

The Supplier waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

21 SEVERANCE

If a provision of a Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

22 VARIATION

The Supplier may vary the Terms and Conditions without notice to the Customer.

23 COSTS

The Customer must pay to the Supplier, and indemnify the Supplier for, all costs and expenses incurred by the Supplier in connection with the Contract including legal expenses (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to the Supplier or in otherwise enforcing the Supplier's rights against the Customer under the Contract.

24 ASSIGNMENT

- (a) The Supplier may assign to any person this document and any Contract.
- (b) The Customer shall not assign, transfer, encumber or declare trusts in respect of this document or any Contract.

25 APPLICABLE LAW

This document is governed by the law of the State and the courts of that State have non-exclusive jurisdiction in connection with this document.