

ACRAN SOUND CONTROL PTY LTD TERMS AND CONDITIONS OF ORDER

1. Definitions

The following terms used in this Contract shall have the following meanings:-

"Confidential Information" of the Purchaser means any information relating to the business and affairs of the Purchaser; relating to the customers, clients, employees, sub Contractors or other persons doing business with the Purchaser; which is by its nature confidential; which is designated as confidential by the Purchaser; or which the Seller knows or ought to know, is confidential; "Contract" means these terms and the order issued by the Purchaser with these terms;

"Insolvency Event" means if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Seller, if the Seller is unable to pay its debts when they become due and payable, if the Seller ceases to carry on business or if the Seller or the Seller's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth).

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"GST Act Supplier" means the entity making the Supply.

"Intellectual Property Rights" means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, trade mark, registered design, registered or unregistered plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.

"Law" includes Acts, regulations, by-laws, ordinances, certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the Works and fees and charges payable in connection with the foregoing;

"Progressive or Periodic Supply" means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.

"Purchaser" shall mean ACRAN Sound Control Pty Ltd trading as ACRAN Sound Control, ACRAN or Sound Control;

"Seller" shall mean that entity identified overleaf to whom this order is directed by the Purchaser; Site

"Site" means that location where the Works are to be undertaken; and

"Works" means that work described overleaf to be completed in accordance with this Contract and includes but is not limited to the manufacture and supply of goods, plant, equipment, units, components, fittings, attachments of whatsoever kind or nature, the repair, maintenance, improvements, supply of labour and the performance of work on Site.

2. Conditions of Contract

2.1 From time to time, the Purchaser may order Works from the Seller.

2.2 The Seller must supply the Works to the Purchaser in the volumes, at the locations and times and in the timeframes contemplated by each order and in accordance with this Contract.

2.3 The Seller acknowledges that the Purchaser may manufacture, or obtain from a third party, products and services in the nature of the Works, including under clause 6.

2.4 This Contract constitutes the entire agreement between the Purchaser and the Seller and supersedes all prior arrangements written or oral. To the extent permitted by law, any statement, representation or promise made in any other document (including without limitation in any terms or conditions proposed by the Purchaser for the Works) or any discussion has no effect.

2.5 Without limiting clause 2.4, the Seller represents and warrants, and it is a condition of this Contract, that all information provided by the Seller or on the Seller's behalf to the Purchaser is accurate and is not, whether by omission of information or otherwise, misleading; the Seller has not withheld from the Purchaser any document, information or other fact material to the decision of the Purchaser to enter into this Contract and the Seller did not rely upon any representation made to the Seller by the Purchaser before entry into this Contract.

2.6 The Seller acknowledges that the Purchase is relying on the representations and warranties of the Seller under these terms in entering into this Contract.

3. Assignment and Subcontracting

The Seller must not subcontract or assign a right under this Contract or otherwise deal with this Contract (including any payment to be made to the Seller under this Contract) without the written consent of the Purchaser.

4. Performance

4.1 The Seller must complete the Works with due care and skill, in accordance with this Contract and the Law.

4.2 The Seller must comply with the Purchaser's reasonable directions in carrying out the Works. The parties acknowledge that the Seller's relationship with the Purchaser is one of an independent contractor.

4.3 When on premises owned or occupied by the Purchaser, the Seller must:

(a) comply with, and ensure that all persons involved in the provision of the Works comply with:

(i) the policies, directions and procedures about occupational health and safety;

(ii) the security and confidentiality requirements; and

(iii) the work standards, methodologies and procedures,

of the Purchaser; and

(b) not damage any part of those premises or the fixtures or fittings of those premises.

5. Time

The Seller must commence and complete the Works strictly in accordance with the dates and times specified by the Purchaser or as stated overleaf. The Seller shall be entitled to claim an extension of time to the date it is required to complete the Works only to the extent the Seller is directly delayed by any act, default or omission of the Purchaser. The Seller must undertake reasonable endeavours to mitigate any delay (including without limitation a delay caused by the act, default or omission of the Purchaser) and will promptly notify the Purchaser of any such delay. The Seller acknowledges that it shall not be entitled to any claim against the Purchaser for any delay or disruption costs, expenses, losses or damages for any reason (including without limitation an act, default or omission of the Purchaser) arising out of or in connection with this Contract, at tort (including negligence), in equity or otherwise.

6. Default

If the Seller fails to complete the Works or to deliver all goods to the Site by the times or the dates specified by the Purchaser, breaches this Contract (including without limitation if the Seller suspends performance of the Works, fails to proceed with the Works with due care and skill or is in breach of any Law) or suffers an Insolvency Event, then the Purchaser may, without notice to the Seller and without limiting clause 19 or any of its other rights under the Contract or at Law, refuse to allow the Seller to undertake the Works or deliver goods to Site and terminate the Contract. The Purchaser may in its discretion procure others to undertake the Works or supply goods. The Seller shall be liable to the Purchaser for any additional costs or loss incurred by the Purchaser as a consequence of the Seller's failure or default pursuant to this clause.

7. Variations

7.1 The Seller must immediately commence carrying out a variation to the Works if instructed in writing by the Purchaser. No variation instructed by the Purchaser shall invalidate this Contract.

7.2 The Seller shall not carry out a variation to the Works and is not entitled to payment for a variation to the Works unless that payment is agreed to in writing by the Purchaser.

7.3 The price of any variation shall be agreed between the Seller and the Purchaser, or failing agreement within 20 days of the written instruction for a variation issue by the Purchaser, shall be an amount valued by the Purchaser.

8. Responsibility for Works

Until the Purchaser gives a written notice to the Seller that it is not required to care for the Works (which the Seller acknowledges the Purchaser shall not be obliged to issue until the work for any client of the Purchaser is completed by the Purchaser), the Seller remains responsible for the care of the Works (including risk in any goods supplied to Site but not yet incorporated in the Works) from the date the Works are undertaken (or the goods supplied to Site). The Seller must make good any loss or damage to the Works (or the goods) at the Seller's own expense where loss or damage occurs while the Works (or goods) are within the Seller's care or where loss or damage is caused by any act, default or omission of the Seller or any of its employees, subcontractors, suppliers or agents.

9. Defects

9.1 The Seller shall be responsible for and will at its own cost rectify any defects in the Works.

9.2 Where the defect is in goods supplied by the Seller, the Purchaser may, in its sole discretion, either convert such goods into a condition acceptable to the Purchaser or return such goods to the Seller.

The Purchaser's costs incurred in converting or returning the goods (including any amount paid for the goods) and any losses or damages incurred by the Purchaser as a result of the defective goods, may be deducted from any monies payable to the Seller.

10. Warranty

The Seller warrants to the Purchaser that any goods forming part of the Works are of merchantable quality, safe, durable and fit for the Purchaser's purposes, meet or exceed the Purchaser's requirements notified to the Seller in respect of the Works. The goods delivered to Site shall be manufactured strictly in accordance with any plans and specifications provided and will comply with all Laws, mandatory industry codes and any standard issued by the Standards Association of Australia.

11. Intellectual Property & Confidential Information

11.1 The Seller represents and warrants, and it is a condition of this Contract that use of the Works will not infringe the Intellectual Property Rights or other rights of any third party; and the exercise of the rights contemplated by clause 11.2 by the Purchaser will not infringe the Intellectual Property Rights or other rights of any third party.

11.2 The Seller grants the Purchaser an exclusive, transferable, sub-licensable, royalty-free, global, perpetual licence to exercise the Intellectual Property Rights in the Works including to use the Works.

11.3 The Seller shall protect and indemnify the Purchaser from and against all claims, judgements and losses arising from infringement of any patent, registered design, trademark, copyright or other protected right in respect of the Works and the Purchaser shall have no liability in respect of any goods forming part of the Works being intermingled or combined with the Works and goods of others.

11.4 All drawings, specification/s and any other documents issued by the Purchaser to the Seller pursuant to this Contract and the copyright therein are and shall remain as between the Purchaser and the Seller the property of the Purchaser and the Seller undertakes not to use, copy or reproduce for any purpose other than that stated in this Contract such drawings, specification and documents.

11.5 The Seller agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the Purchaser provided to or obtained by the Seller before or after entry into this Contract.

11.6 The obligations of confidence in clause 11.5 do not apply to Confidential Information that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency, as long as the Seller discloses the minimum amount of Confidential Information required to satisfy the law or rules and before disclosing any information, gives all available written notice to the Purchaser and takes all available steps (whether required by the Purchaser or not) to maintain such Confidential Information in confidence; or that is in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence.

11.7 The Seller acknowledges that the Purchase may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the Purchaser, and that monetary damages would be an insufficient remedy and in addition to any other remedy available at law or in equity, the Purchaser is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clause 11.5.

12. Price and Taxes

12.1 Subject to the Seller complying with this Contract, the Purchaser must pay the relevant price set out in an order to the Seller for the Works contemplated by an order.

12.2 The Seller warrants the price of the Works overleaf are fixed and firm and includes all incidental or reasonably inferred work required to complete the Works.

12.3 The Seller warrants that neither the Works undertaken nor the goods supplied by it shall be subject to price escalation or increase for any reason including but not limited to sales tax, fluctuations in exchange rates, increase in the price of materials or labour, or any increased costs resulting from any industrial award agreement or contribution to superannuation or redundancy schemes.

12.4 Subject to clauses 12.5 to 12.11, the Seller must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this Contract.

12.5 Any words capitalised in clauses 12.5 to 12.11 and not already defined in clause 1 have the meaning given to those words in the GST Act.

12.6 Except under clauses 12.5 to 12.11, the consideration for a Supply made under or in connection with this Contract does not include GST.

12.7 If a Supply made under or in connection with this Contract is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

(a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Contract for that Supply; and

(b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.

12.8 For clarity, the GST payable under clause 12.7 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.

12.9 If either party has the right under this Contract to be reimbursed or indemnified by another party for a cost incurred in connection with this Contract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

12.10 Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

12.11 Where a Supply made under or in connection with this Contract is a Progressive or Periodic Supply, clause 12.7 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

13. Consequential Loss

Subject to clauses 17.2 and 18, neither party is liable to the other party for any indirect, economic, special or consequential loss or damage, loss of revenue, loss of time, loss of goodwill, loss of anticipated savings, loss of opportunity, loss of production and loss of actual or anticipated profit, howsoever arising, including for any breach of the Contract, in tort (including negligence), in equity or otherwise.

14. Title to Goods

The Seller warrants that any goods supplied to the Purchaser in undertaking the Works are free from all liens, charges, mortgages, encumbrances or any other impediments to title. Title in the goods so supplied by the Seller to the Purchaser shall pass immediately upon payment to the Seller by the Purchaser and the Seller warrants it shall exercise no right of repossessing such goods from Site.

15. Specified Requirements

The Seller acknowledges that the Purchaser or any person nominated by the Purchaser shall be entitled at any time to verify at its source that the Works undertaken (including the goods to be supplied) by the Seller conform to specified requirements. Verification by the Purchaser pursuant to this clause shall not absolve or detract from the Seller's responsibility to provide acceptable Works (or goods) nor shall it detract from the Purchaser's right to reject the Works or goods.

Verification by the Purchaser shall not constitute evidence or acceptance by it of the Works (or goods) including without limitation that the Seller has effective quality control in place. The Seller acknowledges that the Purchaser's right to verify at source as stated in this clause includes the right to access the Seller's premises, facilities or Site where the Works are being undertaken or the goods are being manufactured or supplied.

16. Payment

Progress payments made by the Purchaser to the Seller shall be on account only. The Purchaser shall be entitled to withhold payment of any claim or part thereof for the value of any part of the Works which is defective or not otherwise to the satisfaction of the Purchaser. The Purchaser shall not be obliged to make payments to the Seller of any monies under this Contract until the Seller provides to the Purchaser an original tax invoice (compliant with any requirements of the GST Act). Payment will be made within 45 days from the end of the month that a valid tax invoice is received by the Purchaser. If there is a dispute about whether such monies, a refund or other amount contemplated by this Contract is payable or available, the Purchaser may withhold the amount in dispute without penalty until the resolution of the dispute.

17. Insurance & Indemnity

17.1 Prior to the commencement of Works the Seller shall effect and maintain during this Contract (and, if required by the Purchaser, give copies of relevant insurance policies and evidence of their currency) from a reputable insurance company public and products liability insurance with a limit of liability of not less than \$10 million for any one occurrence, contracts works cover for the value of the Works and all insurances required by Law, including workers' compensation insurance.

17.2 The Seller is liable for and indemnifies the Purchaser against any legal liability, claim, loss or damage (including legal costs) incurred or suffered by the Purchaser, however caused, in connection with any death, injury or loss or damage to property in connection with the supply of the Works, ; breach of Law, fraud or wilful misconduct and any claim against the Purchaser in connection with any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the Works.

17.3 Each indemnity in this Contract is a continuing obligation notwithstanding any settlement of account or the occurrence of any other thing, and it is not necessary for the Purchaser to incur expense or make payment before enforcing or making a claim under an indemnity.

18. Work Health & Safety

The Seller shall comply in all respects with the provisions of the *Work Health & Safety Act 2011* (Qld), its regulations and codes of practice and ensure that all other persons in its employ also comply with the provisions, regulations and codes of practice.

Without limiting clause 17.2, the Seller indemnifies the Purchaser against all liability that the Purchaser may incur as result of a failure by the Seller to comply with his obligations pursuant to this clause 18.

19. Term, Suspension and Termination

19.1 This Contract commences on the date set on the order attaching these terms and continues until terminated in accordance with clause 19.

19.2 Without limiting clause 19.3, the Purchaser may, at any time and for any reason suspend the Works by giving the Seller written notice. When the Seller receives a notice of suspension, the Seller must suspend the Works until such time as it is directed to resume the Works. When directed, the Seller must resume the Works as soon as reasonably possible after a direction to resume the Works.

19.3 If:

- (a) the Seller commits a breach of this Contract incapable of remedy;
- (b) the Seller commits a breach of this Contract capable of remedy and fails to remedy that breach with 30 days of written notice from the Purchaser; or
- (c) an Insolvency Event occurs in relation to the Seller,

then the Purchase may terminate this Contract by written notice to the Seller in which case this Contract will terminate on the date specified in that written notice or, if no date is specified, immediately.

19.4 The Purchaser may terminate this Contract at any time by written notice to the Seller in which case this Contract will terminate on the date specified in that written notice or, if no date is specified, immediately.

19.5 On termination of this Contract accrued rights or remedies of a party are not affected.

19.6 Termination of this Contract will not affect clauses 10, 11, 13, 17, 18, 19, 20 and 21 and any other clause of this Contract which is expressly or by implication intended to come into force or continue after termination.

20. Notification of Claims

If the Seller does not give to the Purchaser a written notice of any claim (including without limitation any claim made under a provision of this Contract), action, demand or proceeding it has or alleges against the Purchaser within 15 days of the occurrence of the events or circumstances giving rise to the claim, demand or proceeding first occurring, the Purchaser shall not be liable in connection with any claim, action, demand or proceeding arising from or related to those events or circumstances and the Seller is absolutely barred from proceeding with any claim, action, demand or proceeding arising from or related to those events or circumstances.

21. Queensland Law

Queensland law governs this Contract. The Seller agrees that the *Sale of Goods (Vienna Convention) Act 1986* (Qld) will have no application to any matter in connection with either the Contract or the sale of any goods forming part of the Works. Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from them.

22. Deductions

Any debt or sum claimed by the Purchaser under this Contract whether liquidated or unliquidated may be deducted or set off from any amount owed by the Purchaser to the Seller.

23. PPSA

In this clause, the words 'Accession', 'Comingled', 'Personal Property', 'Financing Statement', 'Security Interest' and 'Verification Statement' have the meaning given to them in the *Personal Properties Securities Act 2009* (Cth) ('PPSA'). If the Purchaser determines that this document (or a transaction in connection with it) is or contains a Security Interest, the Seller agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Purchaser asks and considers necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Purchaser to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
- (c) enabling the Purchaser to exercise rights in connection with the Security Interest.

The Seller must not allow any of the Works supplied by the Seller to the Purchaser to become an Accession to or Comingled with any asset that is not owned by the Seller.

The Purchaser is not required to give any notice, and the Seller waives its rights to receive any notice under the PPSA (including notice of Verification Statement) unless the notice is required by the PPSA to be given (even though the Seller has waived the right to receive notice).