

ARC3D Communication Pty Ltd Terms and Conditions of Trade v1.5 2010

1. **Definitions.** In these terms the following terms have the following meanings:
"Claims" means: any claim, legal action or liability for damages or compensation; liability to pay any fine or penalty; expenses, including repair and legal costs; consequential losses; and injury, including personal injury and death.
"Contract" means the contract to design, manufacture, install and dismantle the Equipment, constituted by the Order, these Terms, any Special Terms and such other documents or written communications which evidence the agreement between the Owner and the Customer.
"Customer" means the person or organization purchasing the Equipment from the Owner;
"Owner" means the company which supplies the Equipment to the Customer;
"Order" means the form used by the Owner for the placement of orders to purchase Equipment;
"Price" means the price for purchasing the Equipment, as shown on the Order or subsequently agreed between the Owner and Customer.
"Site" means the place at which the Equipment is delivered or installed by the Owner.
"Special Terms" means any terms (other than these Terms) which are specified in the Order, or subsequently agreed in writing between the Owner and Customer;
"Terms" means these terms.
2. **Application of Terms.** These terms apply to all Equipment purchased by the Customer from the Owner. If the Special Terms are inconsistent with these Terms, the Special Terms prevail to the extent of any inconsistency.
3. **Ordering and Acceptance.** The Customer may offer to purchase the Equipment by delivering an Order to the Owner. The Owner accepts the Order when it communicates acceptance to the Customer;
4. **Price.** The Price is for the purchase of the Equipment for the agreed Period. It does not include delivery, preparation of the Site, freight, installation, dismantling, packing or pick up, unless as otherwise stated.
5. **Additional Costs.** The Customer must pay to the Owner in addition to the Price, all costs incurred by the Owner (including labour costs unless agreed upon in quoted Contract Price):
 - (a) for delivery of the Equipment, including any additional costs for delivery to other than street level;
 - (b) for freight, installation, dismantling, packing and pick up of the Equipment;
 - (c) for providing any service to the Customer outside of ordinary work hours, on weekends or public holidays;
 - (d) for design, consultancy and other similar services provided in connection with the purchase of the Equipment or the Customer's event;
 - (e) if the Site is not adequately prepared for delivery and/or installation of the Equipment;
 - (f) if the Owner cannot obtain access to the Site;
 - (g) arising from a variation to the Contract, including without limitation: a change in the type of Equipment required; a change in the position where the Equipment is to be or has been installed upon the Site; a change in the location of the Site; or a change in the delivery or pick up instructions from those first agreed;
 - (h) arising from a failure of the Hirer to be in attendance at the agreed time for delivery or pick up of the Equipment;
 - (i) in cleaning the Equipment where it has been returned in an unclean state;
 - (j) for Site inspections in excess of 2 for any one Contract;
 - (k) in enforcing any provision of the Contract against the Customer; andIf any costs referred to in this clause are ascertainable before the Contract commences, they must be paid before that time. This provision does not limit the Owner's rights to damages, compensation or indemnity under any other provision of these Terms.
6. **Copyright.** The Customer acknowledges that copyright in all designs, drawings, proposals and other material produced by the Owner or any of its consultants in connection with this Contract remains the property of the Owner (or its consultants as the case may be). The Customer must not infringe copyright in respect of that material.
7. **Price Lists.** Any price lists published by the Owner may be changed without notice.
8. **Goods and Services Tax and Stamp Duty.** The Price excludes GST and Stamp Duty unless otherwise specified on the Order. Where the Price excludes GST or Stamp Duty, the Customer must also pay GST and Stamp Duty on the Price.
9. **Discounts.** Any discount offered on provided goods or services shall only remain valid if the invoice is paid within ARC3D Communication Pty Ltd's stated trading terms.

- 10. Payment.** The Price will be paid as follows:
- (a) 30% non-refundable deposit on acceptance of the Order by the Owner;
 - (b) 40% 30 days prior to commencement of the Hire Period or hand over of stand; and
 - (c) 30% payment due at the conclusion of the hire period..

The Owner is not obliged to deliver possession of the Equipment to the Customer until funds given in payment of the Price are cleared.

- 11. Credit Card Payments.** The Customer authorises the Owner to complete any documentation for the purposes of the Customer making payment through any credit card or direct debit system. The Owner may, in addition to the Price, charge a credit card fee for payment by credit card. The Owner reserves the right to refuse payment by credit card, including: where the Price exceeds \$5,000; where the Customer proposes to use Diners Club or American Express; or where payment is not made at the times and in the amounts required by these Terms. Should the owner accept payment by credit card under any of these circumstances then a credit card fee equal to 3% for Visa / Mastercard, and 5% for American Express, of the total payment will be charged. Our preferred methods of payment are Electronic Funds Transfer.
- 12. Interest on Unpaid Amounts.** The Customer must pay interest to the Owner at the rate of 8% per month on any amount, which is overdue, from the date it became due until the date it is paid.
- 13. Outstanding Debts.** Where outstanding debts are referred to an external collection agency, the customer will bear all legal and mercantile costs.
- 14. Cancellation and Early Return.** If the Customer cancels the Order after it has been accepted or fails to take delivery of the Equipment the Customer must pay the Price to the Owner as liquidated damages. The Customer is not entitled to any refund of the Price if it returns the Equipment before the agreed Contract Period Ends.
- 15. Instructions from Customer.** The Customer must provide the Owner with clear delivery, installation and pick up instructions at least 7 days prior to commencement of the Equipment Installation Period. These instructions must include the date, time, place and name of the Customer's representative who will receive the Equipment.
- 16. Access.** The Customer warrants that it has the right to access the Site, and that the Owner may access the Site to fulfill its obligations under the Contract.
- 17. Preparation of Site.** The Customer must prepare the Site to the Owner's satisfaction for delivery, installation, dismantling and pick up of the Equipment. This includes ensuring the Site is accessible, removing obstacles, leveling the ground, and ensuring the Site is safe. The Owner is not responsible for doing these things unless agreed under the Special Terms and Conditions segment of this article.
- 18. Electricity.** The Owner may use the electricity supply at the Site for the purposes of installing and/or operating any of the Equipment. This is at no cost to the Owner.
- 19. Owner Receiving Hirer's Goods.** If when the Equipment is returned or collected the Owner receives goods owned by the Hirer, the Owner may dispose of those goods without liability to the Hirer unless the Hirer claims them within 14 days after they came into the Owner's possession. Whether or not the Hirer claims them, the Owner may return the goods to the Hirer at the Hirer's cost.
- 20. No Warranty.** The Owner gives no warranty that the Equipment is fit for the purpose required by the Customer. The Hirer must satisfy itself as to this.
- 21. Substitution of Equipment.** The Owner may substitute the Equipment with equipment of a similar type without liability to the Customer.
- 22. Display of Name.** The Owner's identification, trade name, trade mark and signage may appear on the Equipment. The Customer must not conceal or obliterate these. The Customer cannot claim any charges from the Owner for advertising in respect of these.
- 23. Risk.** The Equipment is at the risk of the Customer during the Hire Period and at all times during which it is on the Site or in the Hirer's possession. The Hirer holds the Equipment as bailee and must take reasonable care of it. The Hirer must not part with possession of the Equipment or encumber it.
- 24. Instructions in Use.** The Customer acknowledges that it has received instructions in the use of the Equipment, that it understands those instructions, and will comply with them.
- 25. Inspection and Repair.** The Owner may inspect and repair the Equipment at any time during the Install, Display and Dismantle Period. The Owner or its representative may enter upon the Site for this purpose.

26. **Removal, Alteration and Use of Equipment.** The Customer must not: remove the Equipment from the Site or its position of installation; alter the Equipment; repair or attempt to repair the Equipment; or use the Equipment for a purpose which is different from that for which it is designed.
27. **Damage to Equipment.** The Hirer must compensate the Owner for the replacement cost of any Equipment which is damaged, lost or stolen during the Hire Period or at any time during which it is in the Hirer's possession. The Hirer must also compensate the Owner for any other loss or expense it incurs as a result of such events.

The Hirer acknowledges that any Equipment which has been damaged will be kept for one month after it is returned to the Owner, and then will be destroyed.
A statutory declaration signed by the Owner as to the condition of the Equipment and the number of items delivered and/or returned is final, cannot be disputed by the Hirer and is admissible in legal proceedings as conclusive evidence of its contents.
28. **Insurance.** The Customer must maintain public liability insurance for \$10 million and property insurance for the full replacement value of the Equipment. For all orders with a total value exceeding \$20,000, the Hirer is required to produce a relevant Certificate of Currency, or have their insurance policy specifically endorsed for the Owner's interests if so requested.
29. **Indemnity.** The Customer indemnifies the Owner, its officers, employees and agents against all Claims the Owner incurs as a result of: the Customer's negligence; the Customer's breach of the Contract; the Customer's breach of any warranty contained in these Terms; the Customer's breach of any law; preparation of the Site for delivery or installation of the Equipment; the Customer's entry upon the Site; the delivery, installation, inspection, use, dismantling and collection of the Equipment; and contact with underground pipes or wires on the Site.
30. **Owner Not Liable.** The Owner is not liable to the Customer for, and is released from liability in respect of: failure to have the Equipment ready for collection when the Installation Period commences; failure to deliver the Equipment in accordance with the delivery instructions; loss, damage or injury to any person, property, animal or thing resulting from the delivery, installation, inspection, use, dismantling and collection of the Equipment; the break down or failure of the Equipment; failure to provide equipment of the type and in the quantity specified in the Order; and defects in the installation of the Equipment at the Site.
31. **Exclusion of Laws.** To the extent permissible by law, all warranties or other rights implied by law in favour of the Customer are excluded.
32. **Limitation on Liability.** If the Owner is liable to the Customer for a breach of this Agreement or any warranty implied by law which has not been lawfully excluded, the Owner's liability is limited to: refunding the Price; repairing the Equipment; replacing the Equipment; supplying the Equipment again; or payment to the Customer of the cost of having the Equipment supplied for use again. The Owner may choose which of these options apply. The Owner is not liable to the Customer for consequential or indirect loss, economic loss, or other expenses. The Customer must not claim a lien over or retain possession of the Equipment in satisfaction of its claim.
33. **Termination.** The Owner may terminate the Contract at any time without liability to the Customer. If the Contract is terminated the Customer must return the Equipment, or the Owner may at its election collect the Equipment from the Site at the Customer's cost.
34. **Amendments.** No amendment to the Contract will be binding on any party unless made in writing properly and duly executed by that party.
35. **Waiver.** The failure of the Owner to exercise any right arising as a result of a breach by the Customer of the Contract will not waive that right, nor will any practice developed between the parties waive or lessen the Owner's rights under the Contract.
36. **Assignment.** The Customer must not assign the Contract.
37. **Governing Law.** The Contract will be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the New South Wales Courts in Sydney City .
38. **Severance.** If any provision of the Contract is, for any reason, considered or found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of the Contract. The remainder of the provisions of the Contract will remain in full force and effect unless the basic purposes of the Contract are defeated.
39. **Warranty Of Authority.** Any person signing or purporting to sign the Order or another document on behalf of the Customer warrants that they have the authority of the Customer to sign, and indemnifies the Owner against all losses incurred if that person does not have such authority.
40. **Joint and Several Liability.** If the Customer is more than one person the Customer is jointly and severally liable under the Contract.

41. **Privacy Policy.** Display Com collects your personal information to assist us in providing the goods or services you have requested and to improve our products and services. We, Display Com and all related companies anywhere in the world may be in touch to let your know about goods, services or promotions which may be of interest to you. Please let us know if you object to this and if you would prefer not to be contacted with special offers or in relation to our other goods and services
42. **Damage Waiver Fee.**
- (a) Upon payment by the Customer of the Damage Waiver Fee the Customer is not responsible for the cost of repairs to or the cost of replacement of the Equipment if necessary because of damage to the Equipment sustained during the Hire Period.
 - (b) Clause (a) only applies where that cost is equal to or less than \$50,000. The Hirer remains responsible for those costs to the extent that they exceed \$50,000.
 - (c) If the Hirer: i. has hired Equipment from the Owner for one event or exhibition; ii. the Equipment has been hired under more than one Contract; and iii. the Hirer has paid the Damage Waiver Fee under more than one of those Contracts,
 - (d) Clause (a) only applies where that cost is equal to or less than \$50,000 in aggregate for those Contracts in respect of which the Damage Waiver Fee has been paid. The Hirer remains responsible for those costs to the extent that they exceed \$50,000 in aggregate for those Contracts.
 - (e) Clause (a) will not continue to operate after the expiration of the Hire Period unless an extension by the Owner is granted in writing and an additional fee is paid.
 - (f) Clause (a) does not limit the Hirer's liability for failure to return the Equipment.
 - (g) Clause (a) will not apply to, and the Hirer remains responsible for, loss or damage occurring to the Equipment:
 - (i) because of breach of any statutory laws or regulations in connection with the use of the Equipment by the Hirer;
 - (ii) because of misuse, abuse, willful or malicious acts, negligent or reckless use or overloading of the Equipment;
 - (iii) because of disregard for instructions given to the Hirer by the Owner in respect of the proper use of the Equipment or in contradiction of the manufacturer's instructions if supplied with the Equipment at the time of hiring;
 - (iv) because of the unexplained disappearance of the Equipment;
 - (v) because of theft of the Equipment;
 - (vi) while the Equipment is in transit, if being carried by the Hirer or an employee, contractor or agent of the Hirer.

Acceptance

– please sign and fax back to ARC3D (fax 02 9699 5541) all pages of this document.

I _____ being authorized to sign on behalf of _____ understand
first name surname company

and accept ARC3D's trading terms and undertake for ARC3D to provide the stated services which are subject to these terms.

_____, _____
signed date