

Specialty Theatre Pty Ltd - Sales Terms & Conditions

1. Preliminary

These are the Standard Terms and Conditions for Specialty Theatre Pty Ltd (the "Seller"), which will apply to every contract whereby you as the Customer (the "Customer") order and purchase the items of the Goods and Services (as set out in the Order) from the Seller.

2. The Contract

- 2.1. The Terms of the Contract between the Seller and the Customer for the sale and supply of items of the Goods and Services are contained collectively in all of the following:
 - a. the duly completed Order, being either a Quote as signed by the Customer or Purchase Order issued by the Customer;
 - b. these Standard Terms and Conditions.
- 2.2. The Contract date is the date the Seller Communicates acceptance to the Customer. An Order once placed where Acceptance has been Communicated may only be cancelled by the Customer if the Seller agrees in writing to its cancellation. Cancellation may be conditional on the Customer paying the costs and expenses incurred by the Seller up to the date of cancellation. The Customer must provide its ABN number on the completed Order unless already provided. Any other instruction made by the Customer for supply of the Goods or Services shall constitute acceptance of these Standard Terms and Conditions.
- 2.3. Where the Goods and Services have to be made or adapted to the Customer's particular specifications or requirements then the Customer must also pay for all work in progress up to the date of cancellation.

3. Defined Terms

In these Standard Terms and Conditions and any related documents, unless the context otherwise requires, the following words and phrases mean: "ABN" means Australian Business Number. "Acceptance" means the occurrence of any one of the following:

- a. the signing of the Quote by the Customer; or Specialty Theatre Pty Ltd T&C 2014
- b. provision of a Purchase Order by the Customer to the Seller; or
- c. the Acceptance by the Seller of a deposit for the Goods and Services in which event the Acceptance will be deemed Communicated without any further steps being required.

"Communicates" means all tenses of the verb and any act of communication and includes written communications, electronic communications and facsimile communications but does not include oral communications unless confirmed in writing electronically or by facsimile.

"Contract" means this contract for the sale and purchase of the Ordered Goods and Services.

"Current Price List" means the price of the Goods and Services as agreed between the Customer and the Seller, exclusive of GST.

"Delivery" means delivery at Customer premises as advised from time to time, or such other place as the Seller and the Customer may in writing agree as the place of delivery for the Goods and Services Ordered.

"Goods and Services" means the Goods and Services as described on the Quotation and/or Invoice as supplied from time to time by the Seller to the Customer.

"GST" means Goods and Services Tax.

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

"Installation" means (where applicable) the installation of the Goods and Services at the site of installation as agreed in writing by the Seller and the Customer.

"Intellectual Property" means all copyright in all designs, plans and drawings of the Goods and Services, all Designs whether registered or unregistered, all trade marks and logos whether registered or unregistered, all patents granted and patents pending and all know-how and information pertaining to the manufacture of the Goods and Services.

"Invoice" means a tax invoice that complies with the GST Act.

"Parties" means the Seller and the Customer.

Specialty Theatre Pty Ltd - Sales Terms & Conditions

3. Defined Terms continued

“**Person**” means any individual, company or entity not being a Party and not being an employee of a Party.

“**Price**” means the purchase price of the Goods and Services exclusive of GST determined by reference to the Seller’s Current Price List and as set out in the Order.

“**Quote**” means the Quote for the Goods and Services as issued by the Seller to the Customer.

“**Specifications**” means any Seller’s specifications applicable to an item of the Goods and Services and where applicable any specifications for Installation.

4. Price and Payment

- 4.1. At the discretion of the Seller, the Price shall be either;
 - 4.1.1. as stated on Invoices prepared by the Seller to the Customer in respect of the Goods and Services; or
 - 4.1.2. as stated on the Quote provided that the Customer accepts the Quote within the time stated on the Quote, or 30 days, whichever is the shorter.
- 4.2. Time is of the essence with respect to payment for the Goods and Services. If no time for payment is stated, then it shall be on issuance of the Invoice or delivery of the Goods and Services, whichever is the sooner.
- 4.3. The Seller may withhold Goods and Services from the Customer until such time as the Customer has paid for them.
- 4.4. Payment will be made by EFT, bank cheque or by any other method agreed between the Seller and the Customer.
- 4.5. Where payment is made by credit card, including but not limited to Paypal accounts, the merchant fee and any other payment fees shall be borne by the Customer.
- 4.6. The Price shall be increased by GST and any other applicable taxes and charges except to the extent that they are expressly included in the Quote or Invoice.
- 4.7. Receipt of payment by any way other than cash shall not be deemed to be payment until such payment has cleared, been honoured or otherwise accepted.
- 4.8. The Customer may not deal with the Goods and Services by way of charge, lien or interest until such time as ownership passes to the Customer.
- 4.9. Where the whole or partial payment of the Price is required by the Seller before Delivery, any failure by the Customer to make such payment when required by the Seller entitles the Seller to:
 - 4.10.1. suspend manufacture of the Goods and Services Ordered; and/or
 - 4.10.2. after seven (7) days, terminate this Contract and claim any damages. Damages will include the actual cost of work in progress up to termination plus the Seller’s loss of gross profit on the Goods and Services Ordered.
- 4.10. Interest on overdue invoices will be charged interest at the rate of 25%pa, calculated daily.

5. Warranties

- 5.1. Nothing in this Standard Terms and Conditions is intended to have the effect of contracting out any of the applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in the applicable state or territory, except to the extent permitted by those Acts where applicable.

6. Delivery of the Goods and Services

- 6.1. The Seller will deliver the Goods and Services to the Customer’s address or as otherwise directed by the Customer.
- 6.2. Delivery of the Goods and Services to the Customer’s nominated freight carrier, or failing that to a carrier nominated by the Seller, shall constitute Delivery of the Goods and Services.
- 6.3. The Customer or the Customer’s representative must be present on Delivery to inspect the Goods and Services Ordered and sign for acceptance of the Goods and Services on Delivery.
- 6.4. The failure of the Seller to Deliver the Goods and Services shall not constitute repudiation of this contract by either of the Parties.

Specialty Theatre Pty Ltd - Sales Terms & Conditions

6. Delivery of the Goods and Services continued

- 6.5. The Seller shall not be liable for any loss or damage whatsoever as a result of a failure to Deliver the goods in a timely manner, or failure to Deliver the goods at all.
- 6.6. Where there is a schedule of times for Delivery referred to in the Quote or Purchase Order then the Seller will take all reasonable commercial endeavours to ensure that the Goods and Services are Delivered on the agreed scheduled dates for Delivery.
- 6.7. The Customer acknowledges that the Seller may be dependent upon supplies of various materials and components from third parties in order to be able to Deliver the Goods and Services to the Customer by the agreed date or dates for Delivery. Any delay in the manufacture of the Goods and Services caused by any shortage or unavailability of materials or components may give rise to a delay in Delivery and the Customer acknowledges and agrees that in such circumstances the Seller will not thereby be in breach of its Delivery obligations.
- 6.8. The Seller reserves the right to invoice the Customer and receive payment for the Goods and Services even though Delivery has not occurred through the Customer's failure to take Delivery of the Goods and Services Ordered.

7. Variations

- 7.1. The Seller does not agree to any variations to this Contract. This Contract does not oblige the Seller to accept any variation in the Goods and Services to be supplied.
- 7.2. The Seller will however (without obligation) consider any variations sought by the Customer.
- 7.3. The terms of any variation will not be binding unless and until they are agreed in writing and signed by the Seller and the Customer. They will then and only then constitute a variation to this Contract.
- 7.4. If no agreement is reached as to a sought variation, then the Goods and Services will be made and supplied in accordance with the terms of the Contract and the Customer will accept the Goods and Services as so made and ordered.
- 7.5. Where the Customer has requested a variation to the Goods and Services and such variation delays Delivery, the Seller reserves the right to invoice the Customer and receive payment on the agreed date of Delivery.

8. Title

- 8.1. Unless otherwise agreed in writing by the Seller and the Customer, title in the Goods and Services Ordered will not pass to the Customer until;
 - 8.1.1. the Goods and Services are fully paid for by the Customer; and
 - 8.1.2. the Customer has met all other contractual obligations due by the Customer to the Seller.
- 8.2. Where the Goods and Services have been Delivered to the Customer prior to having been fully paid for, the Customer will hold the Goods and Services until full payment has been made as a bailee at will for the Seller.
- 8.3. Until such time as ownership of the Goods and Services passes to the Customer, the Seller may give notice to the Customer to return the Goods and Services. Upon receipt of such notice the Customer shall cease to have any rights in the Goods and Services.
- 8.4. Where the Goods and Services are to be Installed by the Customer, the Customer acknowledges and agrees that in the event that payment is not made in accordance with this Contract then no Installation will take place without the Seller's prior written consent until the Goods and Services have been fully paid for.
- 8.5. The Parties agree that the full risk of damage, loss or destruction to the Goods and Services will pass to the Customer on Delivery of the Goods and Services even if title has not passed to the Customer at the time of such damage, loss or destruction. In the event that the Goods and Services are damaged, lost or destroyed after Delivery but before title has passed, the Customer will continue to be liable to the Seller to pay any balance of the Price.
- 8.6. If the Customer fails to pay for the Goods and Services Ordered then the Seller may sue the Customer for the Price as a debt immediately due and owing to the Seller by the Customer, even though Delivery has been suspended because of the Customer's failure to pay the Price when due.

Specialty Theatre Pty Ltd - Sales Terms & Conditions

9. Security over Goods and Services

- 9.1. Notwithstanding anything to the contrary contained within these Standard Terms and Conditions, the Quote, Purchase Order or Invoice;
- 9.1.1. Where the Customer is the owner of any asset capable of being charged (Secured Assets), the Customer and/or Guarantor (if any) agree to mortgage and/or charge the Secured Assets to the Seller to secure all amounts and any other monetary obligations owing.
- 9.1.2. If under any circumstances the Seller elects to proceed in accordance with this Clause, the Customer shall indemnify the Seller from and against all the Seller's costs, including any legal costs and disbursements.
- 9.1.3. To give effect to this Clause and this Contract, the Customer appoints the Seller or the Seller's nominee as the Customer's true and lawful attorney to execute mortgages and charges, including such other instruments and/or agreements as the Seller thinks appropriate, against the Customer's Secured Assets in favour of the Customer. Further, the Seller may institute any necessary legal proceedings and execute any documents to give effect to this Clause.

10. Suspension of Delivery

- 10.1. The Seller may suspend Delivery of the Goods and Services without being in breach of this Contract if:
- 10.1.1. where the Customer must make a prepayment or instalment and fails to pay any pre-payment or instalment of the Price for Goods and Services Ordered until such payment is made;
- 10.1.2. the Customer fails to inspect the Goods and Services Ordered promptly upon being required by the Seller to do so but only until such inspection occurs;
- 10.1.3. whilst any dispute between the Customer and the Seller remains unresolved;
- 10.1.4. the Customer owes any money to the Seller on any account whatsoever;
- 10.1.5. in the reasonable opinion of the Seller, the Customer will be unable to pay the Price or balance of the Price to the Seller.

11. Installation

- 11.1. Unless otherwise agreed in writing, Installation of the Goods and Services Ordered is not part of this Contract. Installation of the Goods and Services Ordered is the Customer's exclusive responsibility and the Seller will not be responsible for any damage done to the Goods and Services Ordered during, or as a consequence of, their Installation or during or as a consequence of the Customer taking Delivery of the Goods and Services Ordered at the site of Installation and attempting to Install them.

12. Ownership of Intellectual Property

- 12.1. Nothing in the Contract between the Parties gives the Customer any interest or right to the Intellectual Property in the Goods and Services Ordered which Intellectual Property the Customer acknowledges is exclusively owned by the Seller.
- 12.2. All copyright in all manuals, diagrams, drawings, plans and specifications that are provided to the Customer with the Goods and Services Ordered remains the sole and exclusive property of the Seller and such items are not to be reproduced without prior written permission of the Seller.

13. Waiver

- 13.1. The failure by either the Customer or the Seller to exercise or enforce any rights conferred hereunder shall not, except where there is an express term to the contrary, be construed or deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or other times thereafter.
- 13.2. A waiver of any right must be in writing signed by the Party waiving that right.

14. Termination

- 14.1. The Seller may cancel these Standard Terms and Conditions and/or cancel Delivery of the Goods and Services by giving written notice to the Customer. The Seller shall not be liable for any loss or damage whatsoever with respect to that cancellation.

Specialty Theatre Pty Ltd - Sales Terms & Conditions

15. Notice

- 15.1. Any notice required to be served must be in writing and may be served personally by facsimile or by email addressed to the recipient. A notice served by pre-paid post shall be deemed served two days after posting (whether received or not) to the recipient's registered office or place of business.
- 15.2. A notice served by email or by facsimile must be addressed to the Party concerned at its facsimile or email address and shall be deemed received the day after sending. An email or facsimile report shall be conclusive evidence of it having been sent and served.

16. Governing Law

- 16.1. This Contract shall be governed by and construed and interpreted in accordance with the laws of the State Victoria, or such other State or Territory of Australia in which the Seller has its principal place of business.
- 16.2. Any dispute will be subject to the exclusive jurisdiction of the Courts of that State or Territory.

17. Interpretation

- 17.1. Where words importing the singular number or the plural number are used they include the plural number and singular number respectively and where words are used importing the neuter, female or masculine gender they include if applicable the masculine, feminine or neuter gender respectively.
- 17.2. Any reference to the Seller or the Customer includes their respective lawful successors and assigns.
- 17.3. The reference to any statute, by-law, code of conduct or standard is a reference to any and all applicable amendments, vacations or replacements thereof.

18. Disputes

- 18.1. In the event of any dispute arising between the Seller and the Customer as to any Party's rights or obligations under the Contract or as to whether either Party has breached or failed to meet its obligations then both Parties agree to meet together and in good faith seek to resolve the dispute.
- 18.2. The Customer is liable for any debt recovery costs incurred by the Seller.
- 18.3. Information relating to the Customer will be provided to our Debt Recovery agency for the purpose of collecting any outstanding money.

19. Whole Agreement

- 19.1. The content of the documents in Clause 2 constitute the whole of the terms of this Contract. Except to the extent the law provides as a mandatory requirement that a term be implied, no term is to be implied into this Contract.
- 19.2. All prior representations, undertakings and statements made by either Party to the other and not expressly included in this Contract are hereby expressly excluded from this Contract and each Party expressly hereby states that it has not relied in any way on such prior representations, undertakings or statements in deciding to enter into this Contract.