

TERMS AND CONDITIONS OF SALE

1. All orders given to Avcom Pty Ltd (hereafter Avcom), ABN 60 056 910 635 are subject to the following terms and conditions.

Definitions and Interpretations

1.1 In these Terms and Conditions:

“Venue Address” means the address at which the Customer stated in the Order

“Contract” means the contract resulting from the acceptance by Avcom of an Order in accordance with clause 2.3

“Credit Application Form” means Avcom’s credit application form by which a customer can apply for a credit account with Avcom in respect to the sale or hire of Goods;

“Customer” means any person who enters into a contract with Avcom for the sale and hire of Goods;

“GST” means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *A NEW TAX SYSTEM (Goods and Services Tax) Act 1999 (Cth)*;

“Loss” means by any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental;

“Damage Waiver” means payment which covers accidental damage only of any hire items and does not cover wilful acts or loss or theft. In accordance with “the hire agreement act section 107 (1) of the Property Law Act 1974 Queensland”

“Factory Out” means the time period which covers the hire

“Order” means an order placed with Avcom for the sale or hire and delivery of goods

“Order Confirmation” means a written confirmation of the order to Avcom

“Price” means the price of the goods specified in the order confirmation

“Goods” means the goods supplied or to be supplied by Avcom to the customer from time to time pursuant to the contract

“The Estimate” means the document headed estimate.

“The Agreement” means and is constituted by the estimate and by these terms and conditions

“Service” means the provision of labour including but not limited to labour for production planning, event management, equipment delivery, setup, operation, pack-down and collection.

“Period of hire” means the period of which the equipment is hired as specified in the estimate.

“Day Rate” means rate per day for the hire of labour and equipment as set out in the estimate.

“Dry Hire” means the hire of equipment to the customer, not associated in the industry, and does not include labour.

“Cross Hire” means a hire of equipment to the customer, who is associated in the event staging industry, and does not require labour.

“Lamp Burn” means the calculation specified by Avcom, relating to the time allocated to run a projector.

“Lamp Strike” means the number of times a projectors lamp is initiated.

“Plasma Burn” means the image burnt into the plasma surface due to prolonged static use.

“Terms and Conditions” means these terms and conditions as amended from time to time by Avcom

1.2 In these Terms and Conditions (including defined terms), unless the context otherwise requires;

- a) the singular includes the plural and vice versa and each gender includes each other gender;
- b) headings are included for convenience only and do not affect the interpretation of these Terms and Conditions

2. Formation of Contract of Sale & Hire of Goods

2.1 These terms and conditions supersede all previous terms and conditions imposed by Avcom and may only be varied in writing by Avcom.

2.2 Each order will constitute an offer by the customer to acquire goods or services from Avcom upon and subject to the terms and conditions and to the exclusion of all other terms and conditions and notwithstanding any qualifications of the terms and conditions (including the terms and conditions contained in any purchase order or other document of the customer) unless expressly agreed by Avcom in writing. Any price list or quotations given by Avcom to the customer are an invitation to the customer to place an order only.

2.3 A contract will be made between Avcom and the customer for the sale and/or hire of goods upon the acceptance of an order confirmation.

2.4 An order may only be made by the customer to Avcom;

- a) In writing, by facsimile transmission, or by electronic data interchange
- b) By telephone, if within 3 business day of the placement of the order, it is confirmed by a means outlined in (a).

2.5 The contract resulting from the provision of the order confirmation cannot be cancelled by the customer without Avcom’s written consent and Avcom at its discretion can impose a reasonable cancellation charge.

2.6 Estimate is only valid for 30 day from the date of the most recent order confirmation.

3. Payment Terms

3.1 The Customer agrees to pay to Avcom 75% of the full price 14 days prior delivery of goods or services unless the customer has completed and returned a credit application form and Avcom has agreed to extend credit to the customer, in which case the customer agrees to pay 50% of the full price upon delivery of goods or services and the balance due from the date of delivery in accordance with the credit terms agreed with Avcom.

3.2 If the price is not paid in full as and when due in accordance with clause 3.1, then Avcom shall have the right to charge interest at a rate of 1.5% per month from the due date to the date that the account is paid in full and should the amount be referred to a collection agency the client shall pay a 15% collection fee plus legal costs on a solicitor/own client basis.

3.3 If Avcom agrees to extend credit to the customer, the customer agrees to the terms stated in the credit application form as terms and conditions of the contract.

3.4 The price is GST exclusive unless stated otherwise. The customer must pay to Avcom any GST which Avcom is liable to pay in respect of supplies made by Avcom under these Terms and conditions, at the same time and in the same manner as first payment is made for supply to which the payment relates.

3.5 Prices, fees and charges are subject to change without notice.

Title and Risk

3.6 The customer acknowledges and agrees that where goods are sold no title of the Goods shall pass to the customer until the price has been paid to Avcom in full.

3.7 Risk of loss of damage to the goods will pass to customer at Factory Out.

Loss and Damage Waiver

3.8 Avcom’s Loss and Damage Waiver policy covers loss or damage as a result of physical and external means. This loss and damage waiver policy is subject to:

- a) The Hirer immediately notifying Avcom of any damage or loss. In the event of theft the police must be notified within 24 hours and a copy the police report submitted to Avcom ;
- b) The Hirer submits a written statement (“Loss & Damage Waiver Report”) detailing the Loss & Damage sustained, how it arose and what action was taken to minimise the loss or damage;
- c) The Hirer pays a processing fee when submitting the Loss & Damage Waiver Report. This fee is \$1,000 per item for data projectors, plasma screens, or \$500 per item for other rental property;
- d) The acceptance of any claim being at the sole discretion of Avcom. In any case, the Hirer accepts and agrees that the loss and damage waiver policy set out herein only covers losses detailed above, and any other loss including without limitation any personal injury or any consequential loss either direct or indirect as a result of damage to, or loss of the covered item shall be excluded and specifically agrees that the following exclusions to a successful claim on the loss and damage waiver apply:

- i. Any item being dropped overboard either inland or coastal waters; ii. Theft without forced or violent entry; iii. Theft by the Hirer, its agents or employees or while the goods are not in their direct control; iv. Misuse or abuse of an item; v. Any act of negligence, malice, lack of care or deliberate act(s) causing loss or damage

4. Delivery

4.1 The Factory Out Date shall be during a period of time agreed by Avcom and the customer.

4.2 Avcom reserves the right to withdraw an order confirmation at any time before the Factory Out Date and will not be liable for any Loss whatsoever arising from its failure to deliver any or all of the goods.

4.3 Any terms of the contract relating to the quality of the goods is not the essence of the contract. Avcom reserves the right to make partial deliveries against an order and to invoice each partial invoice separately and the customer cannot reject goods on the basis of partial delivery.

4.4 Where goods remain in the possession of Avcom after the Factory Out Date (including where the customer fails for whatever reason to take delivery of the goods), Avcom is entitled to charge the customer for all Loss occasioned by the customer not accepting delivery together with any costs or loss in respect of cartage, care and custody of the goods.

4.5 Unless otherwise agreed by Avcom all goods will be delivered to the delivery address.

4.6 In the case of Dry Hires & Sales the customer must insure that it or its employees or agents are in attendance at the delivery address at the agreed time to accept the delivery of the goods and to acknowledge receipt upon the consignment note or invoice accompanying the goods.

5. Inspection, Acceptance of Goods, Services and Customer Obligations

5.1 The customer must inspect the goods within two business days for sales and immediately for hires at the Factory out Date and if no inspection is so made, is deemed to have accepted the goods.

5.2 The customer has no claim for shortages, defects of any Loss in respect of Goods and Services apparent on inspection unless:

- a) A complaint is made in writing to Avcom within 3 business days of the Factory Out date specifying the shortage or defect ; and
- b) Avcom is, after receipt of complaint, permitted to inspect the goods and investigate the complaint.

5.3 If a complaint is not made to Avcom in accordance with clause 5.2, the goods delivered will be deemed to be in accordance with the contract and Avcom will not be held liable for any further losses regarding the use or application of the goods and the customer is bound to pay for them accordingly

5.4 Avcom will only accept the return of goods from the customer, where:

- a) The customer has complied with clause 5.2 and Avcom is satisfied as to the claim by the customer;
- b) The goods are returned to Avcom in the same condition as when first delivered to the customer
- c) If the customer does not return goods the customer must bear the freight costs

5.6 Where incorrect goods are ordered or incorrect item number for goods is used, an incorrect unit of issue or pack size is ordered, and order exceeds the customer's requirements, and incorrect account number is used, or an order is duplicated, the customer may after receiving written authority from Avcom return the goods to Avcom subject to the goods being returned in the same condition as when first delivered to the customer and subject to the customer bearing the freight costs of the deliver and return of goods.

5.7 Where goods are returned to Avcom in accordance with the above provisions Avcom must issue a credit note in respect to any amounts paid by the customer in respect to those goods.

6. The Equipment

6.1 The equipment shall at all times remain the property of Avcom. The customer shall:

- a) Exercise all reasonable care and diligence with the use and handling of the equipment
- b) Where it has been the customers responsibility to return the equipment, return it in good order and working condition by the expiration of the period of hire.
- c) Where Avcom collect the equipment at the expiration of the period of hire, make it available for collection in the same order and working condition as received.
- d) Not tamper or in any way interfere with, or repair, or attempt to repair the equipment,
- e) Be responsible for all accidental damage to the equipment, save and accept where such damage is caused by Avcom
- f) Be responsible for all loss and damage to the equipment occasioned by theft, malicious damage or other unlawful act save and accept where such loss or damage occurs when the equipment is under the effective control of Avcom
- g) At no time during the period of hire, part with possession of the equipment or in any way deal with it in a manner inconsistent with the rights of Avcom as the owner

6.2 In the event that the customer fails or refuses, for any reason whatsoever to return the equipment to Avcom, or make it available for collection by Avcom at the expiration of the period of hire, then the customer shall be in default hereunder and without prejudice to any other rights which Avcom may have, either pursuant to these terms or at law, shall be liable to indemnify Avcom on a day rate basis for such further period of time which shall commence at the expiration of the period of hire and conclude at the earliest to occur of, the date when the equipment is returned to Avcom, or the date when it received monetary compensation the replacement cost of the equipment.

7. Lamp Burn & Strike

A fee will be charged for excessive Lamp Burn & Strikes. The following table illustrates charges and are levied for each 24 hour hire period. Strike Refers to each time the unit is switched on.

| Projector | Strikes Allowed | Lamp Burn Usage Hours Allowed | Excess Strikes Each | Excess Lamp Burn Hourly Charge |
|----------------|-----------------|-------------------------------|---------------------|--------------------------------|
| Panasonic 5600 | 4 | 12 | \$50 | \$50 |
| Barco R6 | 4 | 12 | \$75 | \$75 |
| Barco R10 | 4 | 12 | \$100 | \$100 |
| Barco R12 | 4 | 12 | \$100 | \$100 |

8. Plasma Burn

Please be advised that a static image left on a plasma panel for an extended period may cause "plasma burn". Please ensure images are rotated frequently to avoid damage. Should damage occur you will be responsible for the repair or replacement of the effected unit.

9. Condition of Rented Property

The Hirer acknowledges that:

- a) It has examined the Rented property before accepting it and satisfied itself that it is in good condition, it is suitable for the Hirer's purpose, functions to a high standard, produces accurate readings and complied with prescribed safety standards;
- b) Avcom has given no representation or warranty regarding the quality fitness, safety, suitability, standard or accuracy of the rented property, and no person is authorised by Avcom to do so.

10. Care of Equipment

The Hirer will take good care of the rented property. Any damage (other than fair wear and tear) will be repaired by Avcom or its appointee and will be charged to the Hirer. If any of the rented property is lost or stolen during the rental period, or extension thereof and Avcom's loss and damage waiver options has not been purchased or in the case that Avcom's loss and damage waiver has been purchased and the circumstances surrounding the loss or theft is consequentially deemed by Avcom to be excluded, Avcom reserves the right to charge the Hirer the retail price of the lost or stole item/s. In the event of loss or damage of the rented property the rental charge will continue until the retail price of the rented property is paid for in full by the Hirer which amount is an addition to the rental charge paid.

11. Damage Waiver

The customer will purchase Avcom's loss or damage waiver.

12. Indemnity

The Hirer indemnifies Avcom against:

- a) Any loss of damage to the rented property however arising;
- b) Liability for any death, injury or damage to any person or property arising directly or indirectly from the rented property or its use;
- c) Any claim for breach of intellectual property rights arising in connection with the rented property or its use;
- d) Any loss arising from any part of this rental agreement being void, voidable, or unenforceable for any reason;
- e) Any loss or liability occurred by Avcom resulting from possession, use or operation of the rented property by the Hirer;
- f) Any liability which Avcom may incur under any legislation by reason of the use of the rented property for any purpose other than as stated by the Hirer to Avcom , provided that such loss, damage, claim, or liability is not due to Avcom's negligence;
- g) Anything done by Avcom in exercise or purported exercise of its rights under this rental agreement;
- h) Any claim affecting Avcom 's interest in or titled to the rented property and any action taken by Avcom to protect such interest and title;
- i) Any breach of the Hirer of its obligations under this rental agreement including any failure to insure or adequately insure the rented property or take out the loss or damage waiver cover refer to herein; and
- j) The repossession of the rented property and any related storage, repair and/or sale. Each indemnity in this clause is a separate and independent obligation and continue after the termination of the rental agreement

13. Limitation of Liability

To the full extent permitted by the law, all express and implied terms, conditions and warranties (other than those terms expressly set out in this rental agreement) are excluded. Avcom is not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the rented property. Whether or not the trade practices act 1994 or any laws to a similar affect apply, Avcom 's liability for anything in relation to the rented property and its use, including damage or electronic loss, is limited to the maximum extent permitted by law, in any event Avcom's liability is limited, and Avcom 's option to:

- a) The replacement of the relevant rented property with the same or equivalent rented property;
- b) The repair of the relevant rented property;
- c) Reimbursement of the rent of the relevant rented property for the rental period

14. Equipment Malfunctions

Should the rented property malfunction for reasons other than misuse or accidental damage, then Avcom will repair the product at no charge to the Hirer. In the case of malfunction or damage caused by accident or misuse the rental property will be repaired by Avcom or its appointee and charged to the Hirer. In the event of malfunction Avcom reserves the right to replace the rented property with an equivalent item.

15. Consumables

The rental charges do not include consumable products (e.g. laser printer toner). The Hirer agrees to use only consumable products which are approved by the manufacturer of the rented property and not to use re-inked or re-furnished consumables. Any consumables supplied with the rented property will be paid by the Hirer.

16. Software

- a) If any operating system of application software is included in the rental agreement then the Hirer agrees that the only copies of these made will be for the purpose of security backup. Further to this the Hirer undertakes to destroy any such backup copies at the completion of the rental period and any extension thereof.
- b) Where the Hirer has requested Avcom to install software other than the operating system and Microsoft Office on the rented property, the Hirer declares that they are the holder of the legitimate licence to the software, and have to right to install the software. The Hirer agrees to indemnify and keep indemnified Avcom from any loss or damage arising from or in connection with the installation or use of the software.

17. Cancellation of Orders

If cancellation occurs after an order is placed the Hirer shall incur a cancellation charge equivalent to half the rental charges however if the cancellation occurs within 48 hours of the delivery date, the Hirer shall incur a cancellation charge equivalent to the full rental charges.

18. Rental Sub Licensee Agreements

Any computer system contains one or more Microsoft Products. These products are licensed to Avcom. As a sub licensee of Avcom you are bound by the terms by this rental sub licensee license agreement.

Microsoft license agreement for end users using a Microsoft Product on a rental computer.

Microsoft operations Pty Ltd has licensed the software – **Windows Operation System with Office.**

- a) **Grant of License:** This Microsoft License agreement ("license") permits you to use one copy of the specified version on the Microsoft software product(s) identified above ("software") on the Rental computer, provided the software is in use on only one computer at any time during the period you are a Rental customer. The software is "in use" on a computer when it is loaded into the temporary memory (i.e. RAM) or installed into the permanent memory (e.g. hard disk, CD Rom, or other storage device) of that computer. COPYRIGHT. The Software is owned by Microsoft or its supplier and is protected by United States copyright laws and international treaty provisions. Therefore, you must treat the Software like any other copyrighted material (e.g. book or a musical recording). You may not copy the software or written materials accompanying the Software.
- b) **Other Restrictions:** This Microsoft License Agreement is your proof of license to exercise the rights granted herein. You may not rent of lease, lend, pledge, or directly or indirectly transfer or distribute the Software to any third party, and you may not permit any third party to have access to and/or use the functionality of the Software or otherwise transfer your rights hereunder. You may not reverse engineer, decompile, or disassemble the Software except and only to the extent the applicable law, not withstanding this limitation, expressly permits such activity.
- c) **Product Support:** Any product support for the software is provided to you by Avcom and is not provided by Microsoft or is affiliate or subsidiaries.
- d) **No Warranties, Liabilities or Remedies by Microsoft:** Any warranties, liability for damages and remedies, if any, are provided solely by Avcom and not by Microsoft or its affiliates or subsidiaries.
- e) **Not Fault Tolerate:** The software may contain software that is not fault tolerate and is not designed, manufactured, or intended for use in environments or applications in which the failure of the software could lead to death, personal injury, severe physical, property or environmental damage.
- f) **Liability for breach:** In addition to the liability you may have to Avcom you agree that you will also legally be responsible directly to Microsoft for any breach of the terms and conditions.

19. Severance

If any term or condition of this agreement or the application thereof is or becomes invalid or unenforceable or is there any error or omission in the information, the remaining Terms and conditions and information shall not be affected thereby and each and every term and condition of this agreement shall be valid and enforceable to the fullest extent permitted by law.

20. Privacy

Avcom will comply with privacy policy in respect of any personal information the client provides to Avcom as pertained: (Section 18K (1) Privacy Act 1998)

21. General

19.1 These terms and conditions take effect, are governed by and will be construed in accordance by the laws of the state of Queensland, Australia.

19.2 These terms and conditions are subject to change without notice

19.3 The parties agree that any action arising out of, or relating to these terms may only be brought by a court of competent jurisdiction in the state of Queensland, Australia.

19.4 If any of these terms and conditions found by a court of competent jurisdiction to be invalid or unenforceable if will be struck out and the remaining terms and conditions will remain in force.

19.5 If we do not act in relation to a breach by you of these terms and conditions, this does not waive Avcom's right to act with respect to subsequent or similar breaches.

19.6 You may not assign or transfer any rights or benefits you may receive under these terms and conditions to any other person or entity without the prior written consent of Avcom.