



Terms of Trade

The following terms and conditions ("Terms") are the only basis upon which Videky Trading Pty Ltd t/as Phaseshift Productions will agree to supply Goods and/or Services to the Customer. All orders placed by the Customer are subject to the following Terms. The Customer agrees that they have read these Terms and that they shall become legally binding upon placement of an order.

1. Definitions

- a. "Confidential Information" means all information and materials in any form regarding the parties hereto which a reasonable person would expect from its nature to be confidential (including without limitation, any financial information, trade secrets, company information and commercially sensitive information) or which a party would otherwise not encounter but for this Agreement but does not include information or material which are in the public domain other than by way of unauthorised disclosure or which is already known to a party.
- b. "Goods" means all goods and equipment supplied by the Supplier to the Customer or ordered by the Customer but not yet supplied and includes items described on any quotation, invoice, purchase order, or any other document including any recommendations and advice.
- c. "GST" means a Goods and Services Tax, Value Added Tax, Consumption Tax, or tax of similar effect, whether authorised by A New Tax System (Goods and Services Tax) Act 1999 or otherwise.
- d. "Customer" means the person/s or company named on any quotation, hire agreement, invoice, purchase order, or any other documentation produced in relation to an agreement for the supply of Goods and/or Services, or any person acting on behalf of and with the authority of the Customer.
- e. "Fee" means the amount payable by the Customer to the Supplier in consideration of the Goods and/or Services to be delivered by the Supplier as set out in the Purchase Order.
- f. "Hire Period" means the period for which the Goods will be supplied to the Customer as set out in the Purchase Order, beginning when the Goods are received by the Customer.
- g. "Purchase Order" means an order for the supply of Goods and/or Services by the Supplier to the Customer.
- h. "Services" means all production or other services supplied by the Supplier to the Customer and includes installation, and any other services described on any quotation, invoice, purchase order, or any other document including any recommendations and advice.
- i. "Services Period" means the period for which the Supplier shall render the Services as detailed in the Purchase Order.
- j. "Supplier" means Videky Trading Pty Ltd t/as Phaseshift Productions (ABN 36 152 510 766) its subsidiaries, associates, and related companies, along with their respective successors and assigns.

2. Jurisdiction

- a. The Terms of this Agreement and all transactions contemplated hereunder shall be governed by and construed in accordance with the laws of the State of Victoria, Australia.
- b. The Customer hereby agrees to submit to the exclusive jurisdiction of the Courts of the State of Victoria, Australia in resolving any disputes arising between the Supplier and the Customer.

3. Offer and Acceptance

- a. Any request from the Customer to the Supplier for the supply of Goods and/or Services however made shall constitute acceptance of the Terms contained herein.
- b. Where more than one Customer has entered into an agreement with the Supplier for the supply of Goods/Services, all such Customers shall be jointly and severally liable for all payments of the Fee.
- c. These Terms become binding upon acceptance in accordance with the above clause 3(a), and may thereafter only be altered or revoked with the written consent of the Supplier.
- d. Any changes to the Customer's details, including name, address, telephone, email, or any changes in ownership structure of the Customer requires written notice to the Supplier of ten (10) days.

4.

- a. The Goods/Services are as described on any quotation, invoice, purchase order, or any other document provided to the Customer by the Supplier.
- b. Unless otherwise agreed in writing, the Customer shall be responsible for obtaining all necessary approvals, permits, consents, and or permissions in order for the Supplier to fulfil its obligations.
- c. Unless otherwise agreed in writing, the Supplier assumes no responsibility for the moving of furniture or fittings, or cleaning at any venue whatsoever.

5. Hire of Goods

- a. All Goods made available for hire shall be charged at a daily hire rate as specified on the Purchase Order and comprising the Fee.
- b. All Goods made available to the Customer by the Supplier shall at all times remain the legal property of the Supplier. The Customer does not have any right or entitlement to sell, charge, encumber or grant any right, interest or lien in or over the Goods.
- c. All Goods must be returned to the Supplier at the conclusion of the Hire Period and at the Customer's sole expense.
- d. In the event that the Customer fails to return the Goods in accordance with the above clause 5 (c) the Customer shall be liable for the payment of additional daily hire fees for any period that the Customer retains the Goods following the Hire Period or fails to return the Goods in accordance with these Terms.
- e. At the end of the Hire Period, the Customer must return the Goods to the Supplier in a clean and good condition free of any labels and graffiti. The Customer agrees to pay any costs necessary to clean, repair and ready the Goods for re-hire by the Supplier.
- f. All Goods shall be hired at the Customer's sole risk and the Customer hereby accepts responsibility for the full replacement costs of any Goods that are deemed to be lost, stolen, damaged or missing during the duration of the Hire Period.
- g. At the Supplier's sole discretion, proof of insurance for Goods and/or public liability, along with any corresponding compliance certificates and/or licences shall be required to be produced prior to the commencement of the Hire Period.

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6.
 - a. The Customer agrees to pay the Supplier the Fee within fourteen (14) days of receiving a taxation invoice from the Supplier.
 - b. The Fee will be determined by the Supplier's Quotation, Purchase Order, Hire Agreement or indicated on invoices, order forms, or any other documentation provided by the Supplier to the Customer.
 - c. The Supplier's quoted price will be binding upon the Supplier for a period of three (3) business days after the date of the quotation.
 - d. In the event that the Supplier, or the Supplier's authorised agent, representative, contractor, or employee has not inspected the site where the Goods are to be delivered or the Services rendered, the Supplier shall not be bound by any quotation for installation of the Goods.
 - e. In the event that the Supplier discovers that additional work is required which will cause the Fee to exceed the initial quote as set out in the Purchase Order, the Supplier will seek confirmation from the Customer to proceed with the work.
 - f. Any variation from the original agreed Services, Services Period or Hire Period may affect the Fee. Payment for all variations must be made in full at the time of their completion.
 - g. GST is applicable to the hire of Goods and provision of Services contemplated hereunder.
7.
 - a. Subject to the Customer having been granted a credit account or a prior payment plan/arrangement having been agreed in writing by the Supplier, the Customer agrees to pay all amounts in full and in accordance with the tax invoice provided by the Supplier. In the event that a payment plan or other arrangement has been made with the Supplier, the Customer agrees that any failure to make payment in accordance with the agreed terms shall deem the payment arrangement forfeited and all outstanding amounts owing to the Supplier shall immediately fall due and payable.
 - b. At the Supplier's sole discretion, a deposit of up to 50% of the Fee may be required before the supply of any Goods or provision of any Services.
 - c. Payment of the Fee shall be made by cash, bank cheque (excluding personal cheque), direct deposit, or by any other method as may be deemed acceptable to the Supplier at their sole discretion.
 - d. Should the Supplier agree to payment via credit card, only VISA and MasterCard payments shall be accepted. The Customer acknowledges that payment via credit card will incur a surcharge of 3% of the total Fee (inclusive of GST).
8. Delivery
 - a. The Customer shall be responsible for making all necessary arrangements to take delivery of the Goods, including but not limited to preparation of the venue.
 - b. Delivery of the Goods to any third party nominated by the Customer (including carriers) is deemed to be delivery to the Customer.
 - c. Any delay or failure of the Supplier to deliver the Goods shall not entitle the Customer to treat this contract as being cancelled.
 - d. Should the Supplier fail to deliver the Goods (or part thereof), the Supplier shall not be liable for any loss or damage incurred by the Customer, or any of the Customer's agents, customers, related companies, or contractors resulting from such failure.
 - e. Should the Supplier need to arrange carriage for the Goods, any additional costs incurred by the Supplier, including (but not limited to) applicable insurance, shall be added to the Fee, and will be due and payable in accordance with the Supplier's invoice.
9. Notification of Defects
 - a. The Customer shall inspect the Goods upon delivery and notify the Supplier within forty-eight (48) hours of any alleged defects, or failure to fulfil the Purchase Order. The Supplier must be given access to any such Goods within a reasonable time after delivery in order to inspect any alleged defects in the Goods.
 - b. Should the Customer fail to give notification in accordance with the above clause 9(a), the Goods/Services will be deemed to be accepted by the Customer and free from any defects whatsoever.
10. Warranties
 - a. Where the Supplier has not manufactured the Goods, the Supplier accepts no liability whatsoever, except for any workmanship associated with the supply of the Goods.
 - b. Where the Supplier has agreed in writing that the Customer is entitled to claim under warranty, the Supplier's liability is limited to (at the Supplier's discretion), replacing or repairing the Goods.
 - c. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the sole responsibility of the Customer.
 - d. The Supplier may (at its sole discretion) issue a refund, subject to a handling fee of 20% of the value of the Goods which shall be payable by the Customer irrespective of whether or not replacement goods are supplied to the Customer.
 - e. Any warranty affecting the Supplier shall not be deemed applicable where:
 - The Customer has failed to follow instructions supplied by the Supplier in relation to proper use of the Goods.
 - The Goods have been used in a manner other than their original intended use.
 - Installation of the Goods has not been carried out by persons recognised by the Supplier as being trained and accredited to install the Goods.
 - The Goods continue to be used after any fault or defect has become known to the Customer, or would have become known to a reasonable person.
 - The defect or fault has occurred from reasonable wear and tear in use.
 - The defect or fault has occurred as a result of circumstances beyond the control of either the Customer or the Supplier.
 - Any maintenance or alterations have been made to the Goods without the Supplier's express consent.
 - f. The Supplier accepts no responsibility for loss or damage (financial or otherwise) to the Customer, arising from a delay in the time taken for the Supplier to replace or repair any Goods to which a warranty applies.

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11.

- a. The Customer hereby disclaims any right to cancel the contract, or to seek compensation for loss or damages arising from any misrepresentation made to the Customer by the Supplier, or any related corporations of the Supplier, and their respective officers, employees, agents and contractors.
- b. The Customer acknowledges that they Buy/Hire the Goods/Services relying solely upon their own skill and judgement. The Supplier does not represent that the Goods or Services are fit for any intended purpose, whether or not such purpose has been identified by the Customer.

12. Intellectual Property

- a. Where any designs or specifications have been supplied by the Customer for manufacture by Supplier, the Customer warrants that the use of those designs or specifications for the manufacture, assembly or supply of the Goods shall not infringe the rights of any third party.
- b. The Customer acknowledges and agrees that all rights (including all rights of copyright) in and to any materials (including but not limited to any design, pattern, or specification produced by the Supplier during the supply or manufacture of the Goods) derived from or delivered pursuant to this agreement shall vest with the Supplier in perpetuity throughout the world and the Customer will not use, reproduce, or publish such materials without the prior written consent of the Supplier.

13. Confidential Information

- a. The Customer will not disclose, and will ensure that its employees, agents and contractors do not disclose, and will maintain proper and secure custody of, any Confidential Information which may come to its or their knowledge during the Hire Period/Services Period or the term covered by this Agreement.

14. Registered Security

- a. The Customer grants a security interest in the Goods to the Supplier and agrees that the Supplier is entitled to register the security interest under the Personal Property Securities Act 2009 (Cth). The Customer waives the right to receive notice of such registration.
- b. The Customer hereby charges in favor of the Supplier all of the Customer's estate and interest in any land and in any other assets, whether tangible or intangible, in which the Customer now has any legal or beneficial interest or in which the Customer later acquires any such interest, with payment of all monies owed by the Customer, and consents to the lodging by the Supplier of a caveat or caveats which note its interest in such real property.

15. Default

- i. The Customer hereby agrees that if the Customer should:-
 - As an individual, commit an act of bankruptcy; or
 - As a company, pass a resolution for winding up or have a summons to wind up issued against it; or
 - Become subject to any form of external administration; or
 - Enter into an arrangement regarding outstanding payment with any of its creditors; or
 - Allow any invoice to remain in arrears for a period of over thirty (30) days;all monies currently owed to the Supplier shall become due and payable immediately, and the Supplier shall have the right to terminate the supply of Goods and/or Services to the Customer without further notice or formality.
 - a. Should the Customer fail to pay any invoice when due, the Customer shall be responsible for any additional costs associated with recovery of any and all outstanding amounts, including but not limited to the costs of a solicitor / barrister, and any cost incurred by the Supplier to its nominated collection agency.
 - b. Interest on overdue accounts shall be charged at a rate not exceeding the prevailing bank overdraft rate and the Customer expressly undertakes to pay all such interest.
 - c. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers due to the Supplier exercising its rights under these Terms.

16. Retention of Title

- a. Excluding Goods made available for hire by the Supplier, ownership, property and title in all Goods shall remain vested in the Supplier until the Customer has paid all monies owing to the Supplier for all Goods and Services provided.
- b. The Supplier may request in writing that the Customer return the Goods or any part of them at any time until property in the Goods has passed to the Customer.
- c. Should the Customer fail to return the Goods to the Supplier upon notice given pursuant to clause 16(b), the Supplier, without prejudice to any of its other rights and remedies under these Terms, reserves the right of entry to the Customer's premises or any other premises where the Goods may be stored, by its servants or agents, for the purpose of recovering or reselling the Goods, and any costs incurred as a result of such action will be the sole responsibility of the Customer.

17.

- a. Notwithstanding retention of title as specified in the above clause 16, all risk passed to the Customer upon delivery of the Goods.
- b. If any of the Goods are damaged or destroyed prior to title in them passing to the Customer, or during the duration of any hire agreement, the Supplier is entitled, without prejudice to any of its other rights and remedies under any agreement, to any insurance proceed payable for the Goods so damaged or destroyed.

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18. Cancellation

The Customer acknowledges and agrees that the following cancellation fees listed under this clause 18 are applicable and will be due and payable by the Customer in the event that an order for the hire of Goods or the provision of Services is cancelled after a completed Purchase Order has been delivered to the Supplier by the Customer.

Cancellation Fees:

Number of days prior to Hire Period or Services Period on which notice of cancellation is received by the Supplier from the Customer:

Percentage of total Fee which shall be due and payable by the Customer upon cancellation:

8 – 14 days	30%
2 – 7 days	60%
Less than 2 days or 48 hours	100%

19. Limitation of Liability

The Customer agrees to indemnify and keep the Supplier and its directors and staff, contractors, agents, representatives and any other like-third parties (each an "Indemnified Party") harmless from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, or arising from:

i. A breach of this Agreement by the Customer

ii. Any negligent, reckless or wilful act or omission of the Customer (its officers, employees, sub-contractors, agents or any other person acting on behalf of the Customer) including without limitation, any damage caused to the property of an Indemnified Party

The Customer agrees, to the fullest extent permitted by law, to limit the liability of the Supplier for any actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a fully indemnity basis), so that the total aggregate liability of the Supplier to the Customer shall not exceed the Fee payable by the Customer to the Supplier hereunder. It is intended that this limitation apply to any and all liability or causes of action however alleged or arising, unless specifically prohibited by law.

The Customer is liable to pay for all damage to, loss or destruction of the Goods occurring during the Hire Period.

The Supplier accepts no liability for Goods supplied on the basis of measurements and specifications supplied by the Customer, and the Customer shall be responsible for any additional costs associated with any alteration of the Goods, or the supply of additional Goods.

20. Privacy Act 1988

a. The Customer hereby gives consent to the Supplier obtaining a personal credit report to collect overdue payment on commercial or consumer credit in accordance with the Privacy Act 1988 (Cth), as varied from time to time.

b. The Customer agrees that personal information provided may be used and retained by the Supplier for the following purposes and for other purposes as agreed to between the Customer and Supplier or required by law from time to time:

i. i.Provision of Goods and/or Services

ii. ii.Marketing of Goods and/or Services by the Supplier, its agents, distributors, or contractors

iii. iii.Assessing the credit worthiness of the Customer in relation to extending credit.

iv. iv.Exchanging of information with a credit reporting agency or trade reference named by the Customer

v. v.Processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer

vi. vi.Collection of amounts outstanding in the Customer's account by the Supplier's nominated collection agent or solicitor.

21. The Australian Consumer Law

The warranties, conditions, rights and remedies of the Customer as outlined in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (as amended from time to time) are not intended to be compromised as a result of anything contained in these Terms, except to the degree permitted by law.

22. General

a. The Supplier assumes no responsibility for any changes to the laws of the State of Victoria, or the Commonwealth of Australia which may affect the supply of Goods and/or Services in accordance with the Terms of this Agreement.

b. The Supplier reserves the right to review the Terms contained herein at any time, and if any changes are deemed necessary, the Customer will be advised of such changes upon them being made and they shall thereupon immediately become binding upon the Customer.

c. The Supplier shall not be liable for any breach of any provisions of any contract arising from an act of God, natural disaster, terrorism, war, or any other occurrence beyond the control of either party.

d. The Supplier shall have the right to freely assign this Agreement (whether wholly or partially) to any third party without further notice or obligation to the Customer. The Customer shall have no right to assign this Agreement to any third party without the prior written consent of the Supplier.

e. In the event of any invalidity of any Terms in this Agreement ("Invalid Provision"), such Invalid Provision shall be severed from the remainder of this Agreement and the invalidity of the Invalid Provision shall not affect the application of the remaining terms and conditions of this Agreement.

f. The Terms of this Agreement shall supersede and replace all previous discussions or negotiations between the parties.