

Terms and Conditions of Hire and Service

CDS Audio Visual

ABN 23 164 535 865

1. Definitions

1.1 In these **Terms and Conditions** unless the context otherwise requires:

- (a) **Business Day** is a normal working day excluding Saturdays, Sundays and gazetted Public Holidays in the state in which the Equipment is delivered or collected from **CDS**.
- (b) **Clause** means a clause of these **Terms and Conditions**.
- (c) **Equipment** means the **Equipment** and any **Software** supplied to **Customer** by **CDS** from time to time.
- (d) **Force Majeure** means an act, omission or circumstance over which **CDS** could not have reasonably exercised control.
- (e) **Scope of Work** means the signed **Scope of Work** or Quotation returned by the **Customer** in order to confirm the engagement of **CDS** or any email or verbal confirmation and constitutes the **Customer's** agreement to be proceed and be bound by these terms and conditions.
- (f) **Party** means a **Party** to these **Terms and Conditions** and its successors, trustees and permitted assigns.
- (g) Penalty Interest Rate means the rate prescribed by Section 2 of the Penalty Interest Rates Act 1993 (Cth).
- (h) **Rental Period** means the period commencing on the date of delivery of **Equipment** or **Commencement Date**, whichever is the later; and concluding on the later of:
 - (i) 3:00 pm on **Conclusion Date**; or
 - (ii) if **Conclusion Date** is not a **Business Day**, 3.00 pm of the next **Business Day** after the **Conclusion Date**; or
 - (iii) if **Equipment** is returned damaged, 3.00 pm on the date that **Equipment** is repaired by **CDS** or the replacement cost of **Equipment** is paid by **Customer**.
- (i) **Sub-clause** means a **Sub-clause** of these **Terms and Conditions**.
- (j) **Terms and Conditions** means these **Terms and Conditions** the **CDS Cancellation Policy** and **CDS Privacy Policy** document as is applicable.
- (k) **CDS** is defined as Ivan Kwasha T/As CDS Audio Visual Services (ABN 23 164 535 865) or Ivan Kwasha T/As Conference Data Services (ABN 23 164 535 865) as is applicable.
- (l) **Customer** is defined as the individual, company or organisation engaging the services of **CDS** for the completion of the nominated **Scope of Work** including any and all agents, couriers or other parties engaged by the **Customer** to interact with **CDS**.

1.2 Items appearing in bold type in these **Terms and Conditions** shall be interpreted as defined terms.

2. Interpretation

- 2.1 In the Interpretation of these **Terms and Conditions** unless the context otherwise requires:
- (a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
 - (b) Words denoting the singular number shall include the plural number and vice versa.
 - (c) Words denoting any gender shall include all other genders.
 - (d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.
 - (e) Money references are references to Australian currency.
 - (f) Headings used in this **Terms and Conditions** are for convenience and ease of reference only, and are not part of these **Terms and Conditions** and shall not be relevant or affect the meaning or Interpretation of these **Terms and Conditions**.
 - (g) Every obligation, covenant, agreement, condition express or implied in these **Terms and Conditions** and entered into by more than one **Party** shall bind them jointly and each of them severally.
 - (h) If any provision or part provision of these **Terms and Conditions** is held invalid, unenforceable or illegal for any reason, these **Terms and Conditions** shall remain otherwise in full force apart from such provision or part provision, which shall be deemed deleted.

(i) These **Terms and Conditions** take precedence over any **Scope of Work**, quotation or any other agreement, verbal or written.

3. Scope

3.1 **CDS** shall provide Equipment, Software and Labour for duration of the Rental Period.

3.2 Provided that Customer has not breached any provision of these **Terms and Conditions**, **Rental Period** may be extended at the request of **Customer** at the sole discretion of **CDS**.

3.3 In the event that the **Equipment** is not returned by the expiration of the **Rental Period** then at the sole option of **CDS** a further fee shall become due and payable and such shall continue to accrue on the expiration of the renewed **Rental Period** until the **Equipment** is returned. In the event that **Equipment** is returned prior to the expiration of the **Rental Period** or any extended **Rental Period** then **CDS** may at its sole discretion give a rebate on the Hire Fees but is not obliged to do so. No claim shall be made or maintainable if **CDS** determines not to give a rebate. Nothing in this **Sub-clause** shall oblige **CDS** to so extend a **Rental Period**.

3.4 The **Customer** acknowledges that all delivery and collection times are approximate and late delivery or collection shall not entitle the **Customer** to terminate this agreement or claim any other form of release against **CDS**.

4. Customer's Obligations 4.1 Customer shall:

(a) pay **CDS** all fees and charges payable including without limitation, Hire Fees, Service Fees, Delivery Costs, Collection Costs and Consumables.

(b) collect and return **Equipment** from and to the Delivery Address in a method approved by **CDS**. In particular, but without limitation, **Customer** shall not send **Equipment** via any postal service or third party without written consent from **CDS**.

(c) make all appropriate enquiries about **Equipment**'s fitness for the purposes for which it is hired or used by **Customer** and shall determine whether **Equipment** is fit for that purpose and is in a condition suitable for use. (d) use **Equipment** only for the purpose for which it is manufactured or designed and in accordance with the manufacturer's instructions.

(e) keep **Equipment** insured and be responsible for any loss or damage to the Equipment, either by fire, theft, vandalism, weather conditions, flood, water or any eventuality whatsoever and shall indemnify **CDS** and hold **CDS** harmless for any loss or damage in fact suffered other than through fair wear and tear in the normal course of use. (f) clean the **Equipment** and return it to **CDS** in a clean condition, properly maintained in accordance with the manufacturer's recommendations.

(g) not sell, charge, pledge or part with possession of **Equipment**;

(h) keep **Equipment** at the address specified unless written permission has been obtained from **CDS** to relocate **Equipment** elsewhere;

(i) keep **Equipment** in a careful and proper manner and not interfere or tamper with or let anyone else do so;

(j) return **Equipment** in the same packaging as delivery was made in. **CDS** reserves the right to charge for packaging materials that are not returned.

(k) permit **CDS** its agents or servants to enter the premises where **Equipment** is located at all reasonable times in order to inspect, carry out repairs or collect the **Equipment**.

5. Risk

5.1 Risk for the **Equipment** passes to the **Customer** when the **Equipment** leaves the possession of **CDS** or its duly appointed agent and ceases when the **Equipment** is delivered into the safe possession of **CDS** or its duly appointed agent.

5.2 **Customer** is responsible for the safekeeping of the **Equipment** and shall bear the risk of any loss, theft, damage or destruction of **Equipment**.

5.3 In the event that the **Equipment** requires repair as a result of **Customer's** negligence, misuse or abuse, **Customer** shall bear cost of any such repair including any freight charges.

5.4 **Customer** shall pay **CDS** the new replacement cost as assessed by **CDS** of the **Equipment** which is lost, stolen, destroyed or damaged beyond repair.

5.5 **Customer** shall pay **CDS** a reasonable refurbishing fee in the event that ownership labels or any other notices or labels affixed to **Equipment** are removed or defaced.

5.6 Any item of non-expendable material (including operations manuals) not returned to **CDS** upon cessation of the **Rental Period** shall be charged to the account of the **Customer** at full replacement cost or \$50 which ever shall be the greater amount.

6. Maintenance

6.1 **CDS** shall at its expense provide routine maintenance and recalibration for **Equipment** and shall use its best endeavors to expeditiously repair or replace **Equipment** which becomes defective during the **Rental Period** through no fault of the **Customer**.

6.2 In the event that the **Equipment** does not operate properly **Customer** shall immediately notify **CDS** and request instructions before taking any remedial action.

6.3 **CDS** may at its option and for such length of time as it deems expedient replace **Equipment** with another of such type or model deemed by **CDS** to be similar to the original **Equipment** as shall for the time being be available and **Equipment** so substituted shall be subject to these Terms and Conditions.

(a) **CDS** shall not be liable if the defect is a result of:

(i) Improper use;

(ii) operation of **Equipment** other than in accordance with the operating manual; (iii) modification of **Equipment**;

(iv) use of **Equipment** in an environment other than that for which it was designed; (v) use of **Equipment** by a person other than **Customer**;

(vi) **Customer's** failure to allow maintenance of **Equipment**;

(vii) The serial number or labels being removed or replaced.

7. Limited Warranty and Exclusion of Liability

7.1 CDS warrants that each item of **Equipment** hired is of merchantable quality and reasonably fit for the purpose for which it was designed. All other warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of these **Terms and Conditions** are excluded.

7.2 Where legislation implies in these **Terms and Conditions** any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in these **Terms and Conditions**. However, the liability of CDS for any breach of such term shall be limited, at the option of CDS, to any one or more of the following:

(a) if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(b) if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

7.3 Subject only to **Clause 7.2**, CDS shall not be under any liability to **Customer** in respect of any loss or damage (including, without limitation, consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to these **Terms and Conditions** or the failure or omission on the part of CDS to comply with its obligations under these **Terms and Conditions** including, without limitation, negligence.

8. Title

8.1 CDS retains all rights, including without limitation any intellectual property rights, and title in **Equipment**.

8.2 **Customer** acknowledges that its use of the Microsoft Software accompanying the **Equipment** rented is governed by the relevant Microsoft End User Licence Agreement.

8.3 The use of any Software supplied by CDS is subject to the **Terms and Conditions** of the relevant End User Licence Agreement.

9. Purchase of Equipment

9.1 In the event that the **Customer** seeks to purchase the **Equipment** and CDS agrees to sell the **Equipment** the title to the property therein shall not pass until and unless all Hire Fees and the purchase price have been received by CDS and the payments shall be applied first in reduction of Hire Fees and second on account of the purchase price. Hire Fees shall continue to accrue until the full purchase price has been paid.

10. Force Majeure

10.1 CDS shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to **Force Majeure**.

11. Waiver

11.1 No right of **CDS** shall be deemed to be waived except by notice in writing from **CDS**.

11.2 Any failure by **CDS** to enforce any clause of these **Terms and Conditions**, or any forbearance, delay or indulgence granted by a Party will not be construed as a waiver of **CDS**'s rights.

12. Notices

12.1 Notices under these **Terms and Conditions** may be delivered by hand, by mail, facsimile or e-mail to the address set out in the **Scope of Work**.

12.2 Notices shall be deemed given, in the case of:

- (a) hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving **Party**;
- (b) posting, three days after dispatch;
- (c) facsimile, upon completion of transmission; and
- (d) e-mail, immediately after dispatch.

13. Fees

13.1 **Customer** shall pay **CDS** the Hire Fees on delivery, in advance or within 7 days of invoice (unless specified

otherwise in **Scope of Work**) without withholding, deduction or offset of any amounts for any purpose.

13.2 **CDS** may increase its Hire Fees at any time upon thirty (30) days' notice to **Customer**.

13.3 Except to the extent stated to the contrary in a **Scope of Work**, Hire Fees are exclusive of taxes, duties, fees or other government levies or charges which may be imposed on or in respect of the **Equipment**. Such taxes, duties, fees or other government charges shall to the extent permissible by law be paid by **Customer** to **CDS**.

13.4 **Customer** shall pay **CDS** interest at the **Penalty Interest Rate** on all overdue amounts from the due date until payment is made.

13.5 If any payment owing to **CDS** is not made within seven (7) days of the due date, **CDS** may, without further notice to **Customer**, suspend further services or its remaining obligations to **Customer** under these **Terms and Conditions**.

14. Termination

14.1 Without limiting the generality of any other clause in these **Terms and Conditions**, **CDS** may terminate these **Terms and Conditions** or any **Scope of Work** immediately by notice in writing if:

- (a) any payment due from **Customer** to **CDS** pursuant to these **Terms and Conditions** remains unpaid for a period of seven (7) days;
- (b) **Customer** breaches any provision of these **Terms and Conditions** and such breach is not remedied immediately upon receipt of notice by **CDS** as defined by clause 12 herein; (c) **Customer** is otherwise no longer capable of complying with its obligations under these **Terms and Conditions**; or (d) **Customer** becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of

insolvency administration; **Customer**, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; **Customer** being a natural person, dies; or **Customer** ceases or threatens to cease conducting its business in the normal manner.

14.2 If these **Terms and Conditions** or any **Scope of Work** is terminated then **CDS** may in its sole discretion:

- (a) retain all moneys paid, which is agreed to be a genuine estimate of part of **CDS's** loss and damage suffered;
- (b) charge a reasonable sum for **Equipment** supplied in respect of which no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under these **Terms and Conditions**; and
- (d) enter upon the premises of **Customer**, the consent to which is hereby granted by **Customer**, and repossess the **Equipment**. All such reasonable costs of repossession are the responsibility of **Customer** and shall be added to Hire Fees.
- (e) pursue any additional or alternative remedies provided by law.

14.3 The covenants, conditions and provisions of these **Terms and Conditions** which are capable of having effect after the expiration of these **Terms and Conditions** shall remain in full force and effect following the expiration of the **Terms and Conditions**.

15. Entire Agreement

15.1 These **Terms and Conditions** constitute the entire agreement between the parties for the subject matter referred to in these **Terms and Conditions**. Any prior arrangements, including without limitation, verbal arrangements, agreements, representations or undertakings are superseded.

15.2 No modification, variation or alteration of any provision of these **Terms and Conditions** shall be valid except in writing signed by each **Party**.

16. Governing Law

16.1 These **Terms and Conditions** will be governed by and construed according to the law of the Relevant State or Territory, which hire takes place.

16.2 The parties irrevocably submit to the exclusive jurisdiction of the Courts of the Relevant State or Territory, which hire takes place and Australia and any Courts hearing appeals from such Courts.