

PURCHASE ORDER TERMS AND CONDITIONS: FOR ENCORE EVENT TECHNOLOGIES GROUP PURCHASERS

Application

1. These terms and conditions (**these Terms**) apply to the supply of:
 - (a) the products and goods (if any) including all services required to deliver and make the products and goods operational (**Goods**); and/ or
 - (b) the services (if any) including all goods and equipment required to provide the services (**Services**), specified in the Purchase Order overleaf (**PO**) from Encore Event Technologies Pty Limited (ABN 46 006 668 702) or its related entity named as the purchaser in the PO (**we/our/us**), to the party named as the supplier in the PO (**you/your**).
2. By supplying the Goods and/or Services to us, you agree that these Terms (including Schedule A where you are providing Installation Services) and the PO together comprise a legal contract (**this Contract**) between you as supplier and us as purchaser, to the exclusion of any terms or conditions you have notified to us (whether under any quotation, invoice or otherwise) which have not been expressly agreed to in writing by us by our duly authorised representative.

Delivery

3. In consideration of the price specified in the PO (**the Price**), you must supply the Goods to us and perform the Services in accordance with this Contract by the date (**Delivery Date**) and to or at the address for delivery or performance (**Delivery Address**), specified in the PO or if not specified in the PO, as notified by us on or before issue of the PO, or if not so notified, as we reasonably nominate.
4. You must ensure that all Goods are packed to avoid damage in transit or in storage. Packaging must be marked with the PO number, item number, destination, contents, quantity, date and method of dispatch and weight of each package.
5. We may change the Delivery Address and/or Delivery Date if reasonable to do so, by reasonable advance notice in writing to you and subject to your prior consent. If such change is not mutually agreed, then either party may terminate this Contract by written notice to the other.

Title and Risk

6. Subject to clauses 7 and 8, you bear all risk in Goods until their delivery to us at the Delivery Address (**Delivery**). Delivery will not be taken to have occurred unless we receipt Delivery however receipt does not mean that we accept any Goods or Services.
7. Title to and risk in Goods passes to us on Delivery except for Goods which this Contract specifies are only hired to us for a limited time (**Hired Goods**).
8. Title to and risk in Hired Goods remains with you at all times except that we are not relieved from liability for any theft, loss, shortage in or damage to a Hired Good to the extent caused by our misuse, misconduct or negligent act or omission (or that of any of our servants, agents, contractors or permitted users (**Our Personnel**)) during the period of our Hire of the Hired Good.

Supplier Obligations

9. You must diligently, safely and professionally perform the Services and provide the Goods with due care and skill, in accordance with all laws and requirements including for work, health and safety (**WHS**), all applicable Australian industry standards for highest quality practices, and our reasonable directions, and without interfering with our business or any person at the Delivery Address. You must also in connection with any supply of the Goods and/or Services:
 - (a) comply with the Heavy Vehicle National Law (**HVNL**) as applicable including its chain of responsibility requirements and not do or omit to do anything which would cause us to breach the HVNL, or any other law or regulation;
 - (b) not do anything which would have the effect of causing or encouraging a driver of a motor vehicle to exceed a speed limit or to drive while fatigued or in breach of the driver's work and rest hour requirements under the HVNL;
 - (c) provide all information and assistance, and do all things we reasonably require to comply or to review compliance with the law or any WHS, HVNL or road transport related or other investigation relating to the Goods and/or Services and/or their supply, or to obtain the full benefit of the Goods and Services;
 - (d) ensure that your employees, agents and contractors (**Your Personnel**) who enter or deliver to our premises or other Delivery Address have permission to enter, are properly qualified and skilled and comply with all notified policies and procedures of us and/or relating to such premises or Delivery Address;
 - (e) hold and ensure that all Your Personnel involved in supply of the Goods and/or Services, hold all licences, permits and authorities required and produce evidence of the same on request by us; and
 - (f) discharge and comply with all laws in regard to Your Personnel including for payment of PAYE, fringe benefits and payroll taxes, superannuation and other statutory charges, minimum wages and other entitlements, no sums for which are recoverable from us, and you indemnify us from and against the same.

Insurance

10. You must hold and maintain current insurances at your expense for the full replacement value of the Goods until Delivery, all property used to provide the Goods and/or Services and:
 - (a) product and property liability for no less than \$10million for a single claim;
 - (b) workers compensation insurance; and
 - (c) for Services, professional negligence for no less than \$5million for a single claim,subject to any higher and/or additional insurance specified in the PO or represented by you and you must provide evidence of insurances on request.

Quality

11. The Goods and/or Services must, and you represent and warrant that the Goods and Services will:
 - (a) match any specifications in any quotation from you to us (if any) for supply of the Goods and/or Services (**Quotation**) or the PO, (and if different, the higher of them);
 - (b) be of the same nature and no less a quality as any sample, demonstration and/or representation made or provided by you;
 - (c) be fit for the purpose disclosed by us and if not disclosed, for which goods and/or services of the same kind are commonly supplied or bought; and
 - (d) be merchantable and of high quality, and except for Hired Goods (unless specified otherwise in the PO), all Goods must be new.

Warranty

12. If within 12 months of the date of Delivery of the Goods or the date on which your provision of the Services ends (**Warranty Period**), any aspect of the Goods and/ or Services is found to be damaged (other than by us or Our Personnel after Delivery), deficient, faulty, inadequate or incomplete (each called **Defective**), without limiting any other right we may have, you must at your cost promptly after notice from us:
 - (i) repair or replace the Defective Goods and/or re-perform or make good the Defective Services, as required by us; or
 - (ii) reimburse us for our costs of arranging repair, replacement, re-performance or make good of the Defective Goods or Services.

The Warranty under this clause is a minimum warranty and will be extended to the extent of any warranty provided or represented by you or your manufacturer, and as required by law.

Price

13. The Price is inclusive of all costs, expenses, taxes and duties (except GST if specified as GST exclusive) incurred by you in the supply of the Goods and/or Services including all charges for packing, insurance, delivery, and for Hired Goods, collection of the Goods, and the cost of any labour or items used or supplied, unless the PO specifies otherwise.
14. The Price may not be varied other than to the extent specified in the PO or as agreed by us with you in writing.

GST

15. If GST is imposed on any supply made by you under this Contract, you may invoice us for the GST payable in respect of that supply in addition to the GST exclusive Price, subject to you providing us with a valid tax invoice which complies with these Terms and the provisions of A New Tax System (Goods and Services Tax) Act 1999 (*Cth*) as amended and you must do all things reasonably required to enable or assist us to claim any input tax credit or adjustment of any GST paid or payable by us.

Invoices

16. Within 10 days of Delivery of the Goods and/or completion of the Services, you must provide us with a valid tax invoice which includes: (1) the PO number including line item numbers on the PO; (2) a detailed description of the delivered Goods and/or Services, including date and place of Delivery and/or period of Services provided and quantities; (3) the Price, specified to reflect the same Price components on the PO; (4) the amount of any applicable GST; and (5) the purchaser's name, contact name and Delivery Address matching the PO details; and be sent to our invoice address specified in the PO and if none, to Accounts Payable, Encore Event Technologies, PO Box 147 Ermington NSW 1700.
17. If we request, you must provide us with all relevant records to calculate and verify the amount set out in any invoice.

Payment

18. Subject to these Terms and to our receipt of a valid tax invoice complying with these Terms, we will pay the Price within 30 days of the later of (1) the date of delivery of the Goods and/or Services in accordance with this Contract (2) the date of our receipt of a valid tax invoice, and (3) our receipt of your first end of the month statement to us which includes that invoice.
19. However, we may withhold payment of the Price or a reasonable part to the extent:
 - (a) we reasonably determine that the Goods and/or Services have not been completed and delivered as required by this Contract;
 - (b) the Goods and/ or Services or any aspect are Defective; or
 - (c) there is a discrepancy between the tax invoice and this Contract's requirements;until you have remedied the reason for such withholding, or until any dispute is resolved. We may also deduct any amount you owe us on any account.

Intellectual Property

20. You warrant that all copyright, trademarks, patents, designs, applications for any of the same and any similar rights contained in or otherwise supplied with the Goods and/ or the Services (**IP**) are lawfully able to be used and reproduced by us and our end users without infringement of any person's rights including moral rights.
21. Except to the extent that this Contract expressly only licences us to use any IP, all IP in any material or thing produced or created by you or on your behalf for the purpose of providing the Goods and/ or Services to us is assigned to and vests wholly in us on delivery of the Goods and/ or Services. You must execute and procure that any author of any IP you provide to us executes any additional assurance and moral rights consent we reasonably require to enable us to fully exercise our rights in any IP without infringing any other person's rights.
22. Subject to any other term of this Contract, nothing in these Terms affects your pre-existing IP (**Pre Existing IP**) however you irrevocably grant a perpetual, worldwide, and royalty free licence to us and our sub licensees to use the Pre Existing IP to the extent necessary to use and obtain the full benefit of the Goods and/or Services.
- 22A. You agree to indemnify us from and against any claim, damage, loss, action, cost, expense (including reasonable legal fees) or other liability arising out of any claim against us by an unaffiliated third party that our use of any materials provided by you infringes the IP of that third party.

Confidential Information

23. You must not and must ensure that none of Your Personnel, directly or indirectly disclose (except as required by law), make use of or obtain any advantage from any information disclosed to or which comes to the knowledge of you or Your Personnel in connection with this Contract or any dealings or negotiations with us, and which may reasonably be regarded as confidential including but not limited to information about the operations, products, processes, services, business, finances, dealings, transactions or affairs of us, our related parties, or any of our suppliers or customers, and all details of this Contract, and you must protect the security and confidentiality of such information.

Privacy

24. In relation to any Personal Information (as defined in the Privacy Act, 1988 (*Cth*) (the **Act**) you receive, collect, use or handle in connection with this Contract (**PI**): you must comply with and ensure all Your Personnel comply with the Act and not do anything to cause us to breach the Act, and without limiting that obligation you must: (1) comply with our notified policies and directions, (2) only collect and use PI as reasonably required to perform this Contract, (3) not disclose any PI except as permitted by the Act and with our written consent, (4) not contact any person whose PI you hold other than as allowed to perform this Contract or comply with the Act, (5) have and enforce appropriate policies and controls to ensure PI is stored securely and free of access or disclosure, (6) on termination or completion of this Contract, destroy or deal with PI as directed by us or in default as required by the Act and (7) not transfer or allow access to PI outside of Australia.
- 24A. In this Clause 24A:
- (a) Eligible Data Breach means an 'Eligible Data Breach' as defined in the Privacy Act 1988 (*Cth*).
 - (b) Each party must comply, and ensure that its officers, employees, agents and subcontractors comply with the Privacy Act 1988 (*Cth*) and not do anything, which if done by that party would breach an Australian Privacy Principle as defined in that Act. Each party will notify the other if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner.
 - (c) If a party (**Party A**) becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by Party A as a result of this Contract, Party A agrees to:
 - (i) notify the other party (**Party B**) in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and
 - (ii) unless otherwise directed by Party B, carry out an assessment in accordance with the requirements of the Privacy Act 1988 (*Cth*).
 - (d) Where Party A is aware that there are reasonable grounds to believe there has been, or where Party B notifies the other party that there has been, an Eligible Data Breach in relation to any Personal Information held by Party A as a result of this Contract, Party A must:
 - (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - (ii) unless otherwise directed by Party B, take all other action necessary to comply with the requirements of the Privacy Act 1988 (*Cth*); and
 - (iii) take any other action as reasonably directed by Party B.

25. You hereby consent and warrant that you have obtained the consent of Your Personnel involved in the supply of any of the Goods and/or Services, to our collection, storage, use, disclosure and transfer of any of your or their Personal Information for the purposes of enabling us to communicate with you or Your Personnel for the purpose of this Contract and as disclosed in our Privacy Statement available on our website.

Termination and Liability

26. Either party may terminate this Contract by written notice to the other if the other (**defaulting party**):
- (a) breaches any provision or warranty under this Contract which is capable of remedy and does not remedy the breach within a reasonable time of written notice to remedy, or breaches any material obligation under this Contract which is not reasonably capable of remedy; or
 - (b) ceases to carry on business or in your case, if you suffer a material adverse change in your ability to deliver the Goods and/ or Services as required by this Contract, either of which events will be deemed to be a breach of the defaulting party's material obligations under this Contract not capable of remedy.
27. Termination will not terminate a right which arose before termination or terminate a clause intended to survive termination including clauses 9(c) and (f), 12, 17, 19 to 25 and 27 to 36, which will all survive termination.
28. You indemnify us from and against any loss, damage, cost, (including our legal costs) expense or liability (**Claim**) suffered or incurred by us to the extent caused or contributed by:
- (a) any breach by you of any provision or warranty under this Contract;
 - (b) any wrongful, unlawful or negligent act or omission by, or any misconduct of you, or any of Your Personnel in connection with this Contract; and/or
 - (c) by reason of the Goods and/or Services being Defective, but excluding to the extent such Claim was caused or contributed to by our breach of this Contract or the wrongful, unlawful or negligent act or omission, or misconduct of us or any of our Personnel.
- 28A. We indemnify you from and against any loss, damage, cost, (including your legal costs) expense or liability (**Claim**) suffered or incurred by you to the extent caused or contributed by:
- (a) any breach by us of any provision or warranty under this Contract; and/or
 - (b) any wrongful, unlawful or negligent act or omission by, or any misconduct of us, or any of our Personnel in connection with this Contract; but excluding to the extent such Claim was caused or contributed to by your breach or the wrongful, unlawful or negligent act or omission, or misconduct of you or any of Your Personnel.
29. Your Personnel and all equipment and property used by you or Your Personnel in providing the Goods and/ or Services are at your risk at all times even if located on our premises. However, we are not relieved from liability for any loss, damage or injury to the extent we cause it by our negligent act or omission, or misconduct.

General

30. You must not assign or otherwise deal with your rights or obligations under this Contract and must not without our prior written consent subcontract any obligation under this Contract.
31. This Contract will be governed by and construed in accordance with the laws of the state or territory of Australia where the Goods and/Services are to be delivered (and if more than one, then NSW) and each party submits to the exclusive jurisdiction of the courts of that state or territory.
32. All references to \$ are to \$AUD unless specified otherwise in the PO.
33. You have no authority to bind or incur any liability for us or in our name. You agree that you are an independent contractor and not our employee.
34. These Terms are subject to the terms of any statute which cannot be excluded and any part of any clause that is illegal or unenforceable will be severed and the remaining provisions will continue in force, and in these Terms: words importing the singular include the plural and vice versa; no rules of construction will apply to the disadvantage of a party on the basis that party put forward these Terms or any part; the words "including" and "includes" are not words of limitation; and headings do not affect interpretation.
35. If there is any conflict between any of the documents comprising this Contract, or with the specifications under any Quotation, the following order of priority will prevail (1) the PO, (2) these Terms and (3) the Quotation.
36. You acknowledge that you have had opportunity to review and if requested by you, to negotiate these Terms.
37. Neither party shall be responsible to the other or entitled to terminate this Contract for any failure, in whole or in part, of the other party to perform any obligations hereunder (other than an obligation to pay any sum) to the extent and for the length of time that performance is rendered impossible owing to acts of nature, public insurrection, flood, fire, pandemic, Government order or regulation, strike, lockout, or other labour dispute, and other circumstances of substantially similar character beyond the reasonable control of and not reasonably able to be prevented by the affected party (**Force Majeure**). Any party so affected (**affected party**) must:

- (a) use all reasonable efforts to minimise the effects thereof; and
 - (b) promptly notify the other party in writing of the Force Majeure and the effect of the Force Majeure on the affected party's ability to perform its obligations.
- The affected party must promptly resume performance after it is no longer subject to Force Majeure.

38 Neither party may commence legal proceedings in respect of any dispute between them under this Contract unless and until the procedure set out in this clause 38 has been followed:

- (a) If any dispute arises under this Contract, including in relation to its interpretation or any aspect of its performance, either party may give written notice to the other that a dispute has arisen and request that a meeting be held of duly authorised representatives of the parties within 14 days.
- (b) If a party receives written notice of a dispute from the other in accordance with paragraph (a) above, that party must cause an authorised representative to attend a meeting referred to in that notice.
- (c) If a meeting is held between authorised representatives of each party in accordance with paragraph (b) above and that meeting does not resolve the dispute which was the subject of the notice referred to in paragraph (a), then either party may give written notice to the other requesting that a meeting be held between Executive Officers of each party within 21 days.
- (d) If a party receives a written notice in accordance with paragraph (c) above, that party must ensure that its Executive Officer or General Manager (as the case may be) attends a meeting referred to in that notice.
- (e) If the dispute is not resolved through the above process, then at the expiry of 7 days from the final meeting, either party may commence legal proceedings.

However, nothing in this clause prevents a party commencing legal proceedings in circumstances where the process described above would be inappropriate due to the urgency of the matter in dispute.

39 Both you and us must ensure that in connection with this Contract our respective Personnel have complied and will comply with all applicable anti-bribery, fraud, secret commission and corruption laws.

40 Both you and us confirm that our respective Personnel have not received, and will not receive, any payment, benefit or other thing of value (whether by way of gift, kickback or otherwise) in connection with this Contract that is not legitimately due to you, us or our respective Personnel. Neither of us must make any facilitation payment in connection with this Contract.

41 In this Clause 41, "Modern Slavery" is as defined under the Modern Slavery Act 2018 (Cth). Each party warrants that:

- (a) it will comply with all applicable laws, statutes and regulations in force from time to time which relate to Modern Slavery;
- (b) it will take necessary steps to minimise Modern Slavery in its supply chains or in its sub-contractors' supply chains;
- (c) it will implement and maintain appropriate due diligence procedures for its own suppliers and sub-contractors to minimise Modern Slavery in its supply chains; and
- (d) it will notify the other party as soon as it becomes aware of any suspected Modern Slavery in a supply chain which has a connection with this Contract.

42 Our Code of Conduct forms an integral part of this Contract. It is published at www.cdn.encoreglobal.com/SupplierCodeofConduct.

43 You confirm that you are familiar with our Supplier Code of Conduct and will comply with all applicable laws, regulations and standards, particularly environmental responsibility, protection of international human rights and combating bribery.

44 If you are in breach of any of Clauses 39, 40 or 41 or any provision in our Supplier Code of Conduct, we may terminate the Contract with immediate effect without prejudice to any other rights.

Schedule A Installation Services

This Schedule A only applies where you are providing any Installation Services to us. In this Schedule A, the following words have the express meaning set out below in this Schedule:

"Completion Date" means the date agreed by us and you for the Installation Services to be completed (and accepted by us) at the Site as set out in the PO, or otherwise agreed.

"Installation Services" means the installation services to be performed by you as agreed by us in the PO, or otherwise agreed.

"Site" means the location where the Installation Services will be performed by you.

- 1 The Installation Services must be performed in a diligent and workmanlike manner and be free of any defect.
- 2 You must carry out the Installation Services at the Site and during the period from the Delivery Date to the Completion Date.
- 3 You must advise us of any matter which is likely to cause a significant delay or impediment to you carrying out the Installation Services.
- 4 You will use all reasonable efforts to minimise the delay and must keep us informed of your progress.
- 5 The Goods, when installed, must conform to the conditions and standards on Site and must be compatible and not interfere with existing equipment on Site.
- 6 You shall at your own cost, perform any tests stated in the PO.
- 7 You shall give us reasonable notice in writing of when the tests will be performed.
- 8 The Goods will be accepted when the Installation Services have been completed to our reasonable satisfaction and the Goods have passed any tests set out in the PO.