



In these terms and conditions the following abbreviations shall have the following meanings:

"Customer" means the customer referred to in the Purchase Order and/or Production Schedule;

"goods" includes electronic equipment, hardware, software, video program, multimedia program and any equipment incorporating same;

"master" means any master compact disc, audio cassette, video tape or other media material supplied by the Customer for duplication or use in duplication or production by the Supplier;

"Purchase Order" means the Order Acceptance & Works Sheet (as completed) provided with these terms and conditions;

"Supplier" means BIZ-E-MEDIA

#### Whole Agreement

1. These terms and conditions together with the details and specifications contained in the Purchase Order, shall comprise the whole agreement between the Supplier and the Customer in relation to the goods and/or services referred to in the Purchase Order, and any other representations or conduct made or engaged in or alleged to be made or engaged in by the Supplier to or with respect to the Customer in relation to those goods and/or services, shall not form a part of such agreement. The customer agrees that no such representation or conduct shall give rise to any collateral agreement, warranty, enforceable right or cause of action between, by or of the Customer against the Supplier.

#### Copyright

2. If the Customer has requested the Supplier to supply compact discs containing material duplicated from any master, the Customer warrants to the Supplier that the duplication of that material does not constitute a breach of copyright and is not otherwise unlawful, wrongful or illegal. This will include responsibility and liability for the breaches of any statutory provisions, illegal and fraudulent material, defamatory, false, misleading or deceptive statements, misrepresentations, infringement of trademarks, service marks, business names, copyright or other intellectual property and that furthermore the Customer warrants that they have received all necessary copyright clearances from AMCOS (if applicable) and have paid all fees in relation thereto. The Customer hereby indemnifies the Supplier against:
  - (a) any claims, proceedings, actions, suits and demands, and any actions by public or statutory bodies or authorities, for alleged breach of copyright or for otherwise allegedly unlawful, wrongful or illegal conduct constituted by the duplication of the material or anything reasonably incidental thereto;
  - (b) all costs and expenses and any damages incurred by the Supplier in respect of any such claims, proceedings, actions, suits and demands including legal costs and expenses on a full indemnity basis.
3. When the supplier has added additional music not supplied by the customer there will be a receipt attached to the invoice acknowledging the payment of moneys to AMCOS, by the supplier.
4. The supplier will own the copyright for all software, graphics, animation, video, photography, web design, multimedia design, script, goods, commissioned design work used in the production until such time as the supplier has been paid in full and all monies have been cleared by the bank.
5. The customer agrees to allow the supplier to include the logo of Biz-e-media and a link to the bizemedia.com.au web site with in the production, possibly on the exit page, or somewhere towards the end of the production. (Not applicable for Replication only projects)

#### Time

6. The Customer will approve all work as per the Production Schedule attached to the agreement. Any changes to the work requested out side the schedule as agreed will incur additional cost to the customer.
7. If approval of any stage stated in the schedule is not obtained with –in the stated time, but exceeding 14 days then the contracted is terminated. Upon such termination it will be deemed that the customer has refused to approve the work and refuses to continue with the production but the customer will still be liable for 50% of the remaining contractual amount as determined by the supplier.
8. The Customer shall not be entitled to cancel any order due to any failure or alleged failure by the Supplier to fulfil the order within any time indicated in the Purchase Order. If the Customer wishes to make time of the essence of this agreement, it must give the Supplier written notice of at least seven days of its intention to do so.

#### Quantity

9. The Customer will accept variations of plus or minus ten (10)% in the quantity of any goods ordered by the Customer and supplied by the Supplier, and will accept any consequent increase or decrease in the per unit cost of the order.

#### Cost

10. Any goods supplied or to be supplied by the Supplier under this agreement, remains the property of the Supplier until and unless they are fully paid for by the Customer.
11. The Customer must pay for the goods and/or services in full upon delivery, unless client has a 30 day account approved by Bizemedia.
12. Upon completion, any goods supplied must be collected (if not delivered by the Supplier) by the Customer within 14 days of the Supplier notifying the Customer that the goods are ready. If they are not so collected, the Supplier shall be at liberty to terminate this agreement and thereupon, the customer agrees to pay balance on money owing:

13. The Supplier may vary the price or the unit price of the goods and/or services provided under this agreement with written notice to the Customer, if there is any change in the cost of goods or services supplied to the Supplier in the course of its business.
14. The Customer shall pay to the Supplier interest at the rate of 24% per annum (2% per month) on any amounts outstanding under this agreement or pursuant to the terms of any account which the Customer has with the Supplier, and the Customer hereby acknowledges and agrees that such interest is a genuine pre-estimate of the loss and expense that will be suffered by the Supplier in the event of non-payment in accordance with the terms of this agreement or of any account held by the Customer. (Bizemedia is not a BANK we don't make loans or provide lines of credit, make no mistake we don't want to act as your bank.) If funds are not paid by the due date on the invoice then the supplier reserves the right to pursue every avenue to collect any monies owed, this will be at the customers expense. This will include the use of collection agencies both here in Australia or overseas.
15. All deposits paid to the supplier will be non-refundable if at any time the customer cancels the order. All outstanding chargers will be become immediately payable on such advise and in no circumstances shall the customer be entitled to any refund of payments made under this agreement.

#### Cancellation

16. The Supplier is not under any obligation to accept any cancellations or variations to orders by the Customer. If the Customer cancels or varies any order, it will remain liable to the Supplier for the full price quoted (and any variations thereto properly made under this agreement) in respect of the original order, and the Supplier may recover that amount from the Customer and may also recover from the Customer all its costs and expenses for consequent cancellations or variations to corresponding requests for goods or services placed with its suppliers or subcontractors.

#### Warranties and Liability of Supplier

17. Where the Customer provides to the Supplier any master, the Supplier is under no obligation to check the master in any way including for any errors it may contain, and the Customer hereby indemnifies the Supplier against any claims, losses or demands based upon errors or inaccuracies in the master.
18. Upon request by the Supplier, the Customer will sign any acknowledgment or take any other step reasonably required by the Supplier to acknowledge the identity and contents of any master.
19. To the full extent permitted by law, all warranties and liabilities on the part of the Supplier imposed or implied by law or by statute, including under the Trade Practices Act 1974, are hereby expressly negated, provided that where the Supplier supplies goods manufactured by another manufacturer and the manufacturer has provided a warranty in respect of those goods, the Supplier warrants those goods to the extent and scope of the manufacturer's warranty only.
20. Where a warranty applies to goods supplied by the Supplier, that warranty shall be return to base only and the Supplier shall have no obligation to attend any premises of the Customer or as directed by the Customer to collect, repair, calibrate, set up, operate or inspect any goods. If the Supplier by its employees or agents pursuant to the Customer's request attends any premises of the Customer or as directed by the Customer to so repair, calibrate, set up, operate or inspect any goods the Customer shall be liable to pay to the Supplier the Supplier's usual rates and charges for such service as if no warranty applied to the goods, and if the Customer directs the Supplier to so collect the goods and the Supplier incurs freight charges in so doing the Customer shall be liable to reimburse the Supplier in respect of the freight charges thereby incurred. The Customer hereby acknowledges that it has read this clause and agrees to pay or reimburse the Supplier as stipulated herein in the event that it requests the Supplier to attend its premises or any other premises to so collect, repair, calibrate, set up, operate or inspect any goods.
21. Where the Supplier supplies goods to which certain technical parameters apply or which can only be used or operated in conjunction with or through equipment, hardware or software having certain technical parameters, the Supplier shall not be liable in any way to the Customer by reason of the failure of the goods to operate outside of those technical parameters or to not operate without the use of the said equipment, hardware or software.
22. In respect of duplicated / replicated CD-ROMs, where goods are found to be non-conforming to specifications of order and are therefore claimable under warranty, the goods will be re-manufactured for the Customer at the Suppliers expense. In such instances the Customer will need to return goods to Suppliers premises at the Customers expense after having received returns authorisation from the Supplier. The Supplier is only liable to remanufacture faulty product or faulty portion of a product and is not under any obligation to refund the product in whole or in part. Should a Customer elect to retain any faulty product while their goods are being re-manufactured it will be regarded that the Customer has accepted these goods and will therefore need to pay for these goods on a pro-rata basis in addition to the original contracted price. Normal road freight costs for return of re-manufactured goods to the Customer will be at the expense of the Supplier.

#### Loss of Materials and Consequential Loss

23. The Supplier shall not be liable to the Customer for any loss of or damage to materials or any master provided by the Customer to the Supplier howsoever that damage may occur.
24. The Supplier shall not be liable to the Customer in any way whatsoever for any loss, damage, injury or death caused or alleged to be caused by the Supplier's goods or services to the Customer whether such loss be economic, physical or of some other nature.

#### Acceptance of Goods Or Services

25. The Customer shall be deemed to have accepted any goods or services supplied by the Supplier under this agreement, unless within 24 hours of delivery of the goods or services it returns to the Supplier a copy of the Supplier's invoice relating to those goods together with written notice of any alleged non-conformity of or defect in the goods, and thereupon obtains from the Supplier a return authority number which the Supplier shall give to the Customer in the event that it is satisfied that there was the non-conformity or defect alleged by the Customer. In this respect the Supplier's decision shall be final. The Supplier shall be under no obligation to replace, resupply or repair any goods or services in respect of which the Customer has not obtained a return authority number.

Governing Law

26. This agreement shall be governed by the laws in force for the time being in the State of Queensland, Western Australia, and South Australia. Australian Capital Territory, New South Wales, Northern Territory, Tasmania, Victoria. and New Zealand.

Finance

- 27. The supplier requires the payment of 50% of the total contract price before any work commences on the project, this payment must be in the form of a bank transfer, cash or cheque (work will not commence until funds have been cleared by the bank).
- 28. The balance of 50% of the contract amount and any additional charges as out line in regards to late approval, or additional changes not included in the original quotation by the supplier, will be due on delivery of the goods, this payment must be in the form of a bank transfer, cash or cheque, unless the client has an 30 day account approved by the supplier. (copyright will not be released until all monies are cleared by the bank)

Production Schedule

29. The customer agrees that all the terms, conditions, time lines and supply of assets as outlined in the production schedule will be adhered to. These conditions are essential for the customer to end up with a quantity production delivered on time and on budget.

Confidentiality

- 30. All quotations and documentation received by the customer are in commercial confidence.
- 31. The supplier ensures to the best of its ability that any content or information of a confidential nature submitted by the customer remains protected from third parties.

Anti-Piracy

32. Form FAB301 is to be accompanied by this terms and conditions document. The form lists all of the additional software which is included on the CD to replicated. This is in relation to anti- piracy code of conduct for the protection of all involved. For more information see [www.recording.media.org](http://www.recording.media.org).

The undersigned agrees with the terms and conditions as stated above.

Project name: \_\_\_\_\_ Company: \_\_\_\_\_

Authorised by (print name): \_\_\_\_\_ Company Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Please initial and date each page.